Montana Legislative History

Chapter: 131 Session L: 2021
Bill Number: 164 House

Checklist of Bill History

History and Final Status Sheet	☐
Introduced Bill	☐
Fiscal Note	☐
Third Reading Bill	☐
Final Version of Bill	☐

House	**Senate**
Committee: Judiciary	Committee: Judiciary
Hearing Date(s): 01/25/2021	Hearing Date(s): 02/23/2021
Committee Report: 01/29/2021	Committee Report: 03/09/2021

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: S.K. Marshall

Date: 02/23/2024

Notes: Hearings are available at: https://sg001-harmony.sliq.net/00309/Harmony/en

Bill Draft Number: LC1294
Bill Type - Number: HB 164
Short Title: Revise temporary automatic domestic relations orders
Primary Sponsor: Connie Keogh (D) HD 91
Chapter Number: 131

Bill Actions - **Current Bill Progress:** Became Law

Bill Action Count: 49

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/01/2021			
(H) Signed by Governor	04/01/2021			
(H) Transmitted to Governor	03/23/2021			
(S) Signed by President	03/22/2021			
(H) Signed by Speaker	03/22/2021			
(C) Printed - Enrolled Version Available	03/18/2021			
(H) Returned from Enrolling	03/18/2021			
(H) Sent to Enrolling	03/16/2021			
(S) Returned to House	03/15/2021			
(S) 3rd Reading Concurred	03/15/2021	50	0	
(S) Scheduled for 3rd Reading	03/15/2021			
(S) 2nd Reading Concurred	03/12/2021	50	0	
(S) Scheduled for 2nd Reading	03/12/2021			
(S) Committee Report--Bill Concurred	03/09/2021			(S) Judiciary
(S) Committee Executive Action--Bill Concurred	03/09/2021	11	0	(S) Judiciary
(S) Hearing	02/23/2021			(S) Judiciary
(S) Referred to Committee	02/05/2021			(S) Judiciary
(S) First Reading	02/05/2021			
(H) Transmitted to Senate	02/04/2021			
(H) 3rd Reading Passed	02/04/2021	97	0	
(H) Scheduled for 3rd Reading	02/04/2021			
(H) 2nd Reading Passed	02/03/2021	100	0	
(H) Scheduled for 2nd Reading	02/03/2021			
(H) Committee Report--Bill Passed as Amended	02/01/2021			(H) Judiciary
(H) Committee Executive Action--Bill Passed as Amended	01/29/2021	19	0	(H) Judiciary
(C) Amendments Available	01/28/2021			
(H) Hearing	01/25/2021			(H) Judiciary
(H) Fiscal Note Printed	01/19/2021			
(H) Fiscal Note Signed	01/19/2021			
(H) Fiscal Note Received	01/19/2021			
(H) First Reading	01/15/2021			
(H) Referred to Committee	01/15/2021			(H) Judiciary
(C) Introduced Bill Text Available Electronically	01/14/2021			
(H) Fiscal Note Requested	01/14/2021			
(H) Introduced	01/14/2021			
(C) Draft Delivered to Requester	01/14/2021			
(C) Draft Ready for Delivery	01/07/2021			
(C) Executive Director Final Review	01/07/2021			
(C) Draft Ready for Delivery	01/07/2021			
(C) Draft in Assembly	01/07/2021			
(C) Executive Director Review	01/07/2021			
(C) Bill Draft Text Available Electronically	01/05/2021			
(C) Draft in Final Drafter Review	01/05/2021			

(C) Draft in Input/Proofing	01/04/2021
(C) Draft to Drafter - Edit Review	01/04/2021
(C) Draft in Edit	01/02/2021
(C) Draft in Legal Review	12/28/2020
(C) Draft to Requester for Review	12/28/2020
(C) Draft Request Received	11/24/2020

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Keogh	Connie	
Drafter	Sandru	Alexis	
Primary Sponsor	Keogh	Connie	

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Family Law (see also: Minors)		Simple	FAM

Additional Bill Information

Fiscal Note Probable: Yes
Preintroduction Required: N
Session Law Ch. Number: 131
DEADLINE
Category: General Bills
Transmittal Date: 03/02/2021
Return (with 2nd house amendments) Date: 04/20/2021

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-OCT-21	

HOUSE BILL NO. 164

INTRODUCED BY C. KEOGH

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING LAWS REGARDING TEMPORARY AUTOMATIC DOMESTIC RELATIONS ORDERS IN INVALIDITY OF MARRIAGE, DISSOLUTION OF MARRIAGE, AND LEGAL SEPARATION PROCEEDINGS; PROVIDING FOR THE ISSUANCE OF AUTOMATIC ECONOMIC RESTRAINING ORDERS; AND AMENDING SECTIONS 19-2-801, 40-4-105, AND 40-4-121, MCA.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Automatic economic restraining order.** (1) On the filing of a petition for declaration of invalidity of marriage, a petition for dissolution of marriage, or a petition for legal separation, the clerk of the district court shall issue a summons and shall include with the summons an automatic economic restraining order that provides as follows:

"AUTOMATIC ECONOMIC RESTRAINING ORDER

It is hereby ordered:

(1) The parties are restrained from transferring, encumbering, concealing, or in any way disposing of, without the written consent of the other party or an order of the court, any marital property, except:

(a) for expenses necessary to reasonably maintain the marital standard of living or for the necessities of life, such as food, clothing, shelter, necessary health care expenses, transportation to and from work, and child care, taking into consideration additional living expenses arising out of a party obtaining a second household and current available income;

(b) in the customary and usual course of operating an existing business; or

(c) for the purpose of paying a reasonable amount for professional fees and costs relating to a proceeding under Title 40, chapter 1, part 4, Title 40, chapter 4, or Title 40, chapter 15.

(2) Each party shall file a notice with the court of any proposed extraordinary expenditure, proposed revocation of a nonprobate transfer, or proposed elimination of a right of survivorship to property at least 14 days before the action is taken.

(a) The notice must include:

(i) the proposed action and when the action is intended to occur;

(ii) how the proposed action may impact the marital estate; and

(iii) why the proposed action is necessary at that time.

(b) The notice is not sufficient unless the notice contains the following statement: "The moving party's proposed action will be permitted without further proceedings or order of the court unless within 14 days of the date of filing of the notice you file with the court and serve on all persons entitled to notice a response objecting to the proposed action, which states the reasons for your objection."

(c) If the other party files an objection to the proposed action before the expiration of the 14-day period, the party proposing to take the action is prohibited from taking the proposed action until the court rules on the proposed action.

(d) The burden of justifying the proposed action is on the party proposing the action. The court may award reasonable attorney fees if a party makes an unreasonable request for or an unreasonable objection to the proposed action.

(e) A "nonprobate transfer" means an instrument, other than a will, that makes a transfer of property on death, including a revocable trust, a pay-on-death account in a financial institution, a transfer on death registration of personal property, or a revocable transfer on death deed.

(3) The parties are restrained from:

(a) canceling jointly held credit cards or terminating signatory authority of the other party on a credit card;

(b) incurring unreasonable debt, including but not limited to further borrowing against any credit line secured by the family residence, further encumbrancing of any assets, or unreasonably using credit cards or cash advances against credit cards, except as provided for in subsections (1)(a) through (1)(c) or subsection (2);

(c) except as allowed by subsections (1)(a) through (1)(c) or subsection (2), making any withdrawal for any purpose or borrowing from any deferred compensation, retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account;

(d) except as allowed by subsections (1)(a) through (1)(c) or subsection (2), withdrawing or borrowing in any manner all or any part of the cash surrender value of any life insurance policies on either party or any of their children;

(e) changing or in any manner altering the beneficiary designation on any life insurance policies on either party or their children or changing or in any manner altering the beneficiary on any other account or asset;

(f) canceling, altering, or allowing to lapse any existing property, life, automobile, or health insurance policies insuring the parties' or children's property or persons;

(g) negotiating any instrument, check, draft, income tax refund, insurance payment, or dividends payable jointly to the parties or individually to the other party without the personal signature or prior written consent of the other party;

(h) opening, diverting, or withholding mail addressed to the other party, except a party may open mail addressed to both parties or file a notice of change of the party's individual mailing address; and

(i) without objectively reasonable justification, intentionally or knowingly damaging or destroying the property of the parties or of either party during the pendency of this action, specifically including but not limited to any electronically stored materials, electronic communications, or financial records, without order of the court or written consent of the other party.

(4) Unless otherwise ordered by the court, a party is not restrained from:

(a) creating, modifying, or revoking a will;

(b) revoking or changing a power of attorney; or

(c) creating an unfunded revocable or irrevocable trust.

(5) This order does not adversely affect the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of this order.

(6) The court may expand, limit, modify, or revoke this order, and nothing prevents either party from requesting such relief. Furthermore, the parties, with joint agreement, may waive in writing some or all of the provisions of this order.

(7) The parties shall serve preliminary financial disclosures within 60 days of service of the petition for dissolution, declaration of invalidity of marriage, or legal separation pursuant to 40-4-252.

(8) This order is binding on the petitioner on filing of the petition, and this order is binding on the respondent on service of the petition.

(9) In issuing any temporary orders or in a final decree, the court may consider any action taken by the petitioner within a reasonable time prior to filing of the petition that would otherwise have constituted a violation of this order had this order been issued at the time.

(10) Except as otherwise ordered by the court, this order is dissolved on dismissal of the action or granting of the declaration of invalidity, dissolution of marriage, legal separation, or other final order.

(11) Failure to follow this automatic economic restraining order is subject to enforcement by the court, on a motion to the court. The court may issue any appropriate enforcement order as set forth in [section 1(4)], including, if appropriate, sanctions and all remedies for contempt of court."

(2) An automatic economic restraining order entered pursuant to this section, unless otherwise ordered by the court, is dissolved upon dismissal of the action or granting of the petition for declaration of invalidity, dissolution of marriage, legal separation, or other final order.

(3) Nothing in this section precludes a party from applying to the court for an order to expand, limit, modify, or revoke the automatic economic restraining order.

(4) If a party fails to comply with the automatic economic restraining order, the other party may move the court to grant an appropriate order, including, if appropriate, sanctions and all remedies for contempt of court.

Section 2. Section 19-2-801, MCA, is amended to read:

"**19-2-801. Designation of beneficiary.** (1) In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, estate of the payment recipient, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership form provided by the board.

(2) Unless otherwise provided by this title or by a valid temporary restraining order issued pursuant to 40-4-121, an order issued pursuant to [section 1], or an order issued pursuant to Title 40, chapter 15, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership form provided by the board.

(3) If a person returns to covered employment in the same retirement system pursuant to 19-2-603, the person shall complete a new membership form and file it as provided in subsection (2). However, until the new membership form is filed, the board shall reference the membership form executed by the person prior to initial termination of membership for the same purposes as prior to termination. Beneficiaries designated on that membership form continue to be beneficiaries until the new membership form is filed.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), the beneficiary designation on the most recent membership form filed with the board is effective for all purposes until the member retires.

(b) A member may elect to either override or retain the member's existing beneficiary designation when completing a membership form for temporary or secondary employment with another employer within the same Title 19 retirement system.

(c) When a member retires, the designated beneficiaries or contingent annuitants named on the retirement application become effective.

(5) If a statutory or designated beneficiary predeceases the member or payment recipient, the predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts proportional to each remaining statutory or designated beneficiary's original share.

(6) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient.

(7) A contingent annuitant of a retired member who elected option 2, 3, or 4 pursuant to 19-3-1501, 19-5-701, 19-7-1001, or 19-8-801 may not renounce the contingent annuitant's interest in the payment rights of the member."

Section 3. Section 40-4-105, MCA, is amended to read:

"**40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses.** (1) The verified petition in a proceeding for dissolution of marriage or legal separation must allege that the marriage is irretrievably broken and must set forth:

(a) the age, occupation, and residence of each party and the party's length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days preceding the commencement of this proceeding; or

(ii) there is serious marital discord that adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support of the children and maintenance of a spouse;

(f) a proposed parenting plan, if applicable; ~~and~~

(g) the relief sought; and

(h) the petitioner's acknowledgment that the automatic economic restraining order provided for in [section 1] applies to the petitioner on filing of the petition with the clerk of the district court.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 21 days after the date of service file a verified response. A decree may not be entered until 21 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

[(6) The social security number, if known, of a person subject to a decree of dissolution or a support order must be recorded in the records relating to the matter. The social security number may be included in the state case registry and vital statistics reporting form filed pursuant to 40-5-908(1). The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(7) Documents filed before the court containing financial account information must comply with the privacy protection requirements of Rule 5.2 of the Montana Rules of Civil Procedure. (Bracketed language

terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999; sec. 12, Ch. 88, L. 2013.)"

Section 4. Section 40-4-121, MCA, is amended to read:

"**40-4-121. Temporary order for maintenance or support, temporary injunction, or temporary restraining order.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance, temporary support of a child of the marriage entitled to support, or a temporary family support order. When a party is receiving public assistance, as defined in 40-5-201, for the minor children at issue or when a party receives public assistance during the life of a temporary family support order, the temporary family support order must designate separately the amounts of temporary child support and temporary maintenance, if any. The temporary child support order or the designated child support portion of the family support order must be determined as required in 40-4-204. The motion must be accompanied by an affidavit setting forth the factual basis for the motion, the amounts requested, a list of marital estate liabilities, a statement of sources of income of the parties and of a child of the marriage entitled to support, and, in the case of a motion for a temporary family support order, a proposal designating the party responsible for paying each liability. If ordered by a court, a temporary family support order must, without prejudice, direct one or both parties to pay, out of certain income sources, liabilities of the marital estate during the pendency of the action, including maintenance liabilities for a party or support of a child of the marriage entitled to support. If income sources are insufficient to meet the marital estate periodic liabilities, the temporary family support order may direct that certain liabilities be paid from assets of the marital estate. At any time during the proceedings, the court may order any temporary family support payments to be designated as temporary maintenance, temporary child support, or partial property distribution, retroactive to the date of the motion for a temporary family support order. When a party obtains public assistance, as defined in 40-5-201, or applies for services under Title IV-D of the Social Security Act, after the court has issued a temporary family support order, the petitioner shall promptly move the court for designation of the parts, if any, of the temporary family support order that are maintenance and child support and the court shall promptly so designate, determining the child support obligation as required in 40-4-204.

(2) As a part of a motion for temporary maintenance, temporary support of a child, or a temporary family support order or by independent motion accompanied by affidavit, either party may request that the court issue a temporary injunction for any of the following relief:

(a) ~~restraining a person from transferring, encumbering, concealing, or otherwise disposing of any property, except in the usual course of business or for the necessities of life, and if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued~~restricting, enhancing, ordering, or otherwise modifying or reaffirming the restrained or permitted provisions of the temporary economic restraining order pursuant to [section 1];

~~(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered;~~

~~(c)~~(b) enjoining a party from molesting or disturbing the peace of the other party or of any family member or from stalking, as defined in 45-5-220;

~~(d)~~(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

~~(e)~~(d) enjoining a party from removing a child from the jurisdiction of the court;

~~(f)~~(e) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment;

~~(g)~~(f) providing other injunctive relief proper in the circumstances; and

~~(h)~~(g) providing additional relief available under Title 40, chapter 15.

~~(3) When the clerk of the district court issues a summons pursuant to this chapter, the clerk shall issue and include with the summons a temporary restraining order:~~

~~(a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether jointly or separately held, without either the consent of the other party or an order of the court, except in the usual course of business or for the necessities of life. The restraining order must require each party to notify the other party of any proposed extraordinary expenditures at least 5 business days before incurring the expenditures and to account to the court for all extraordinary expenditures made after service of the summons. However, the restraining order may not preclude either party~~

~~from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.~~

~~(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered. However, nothing in this subsection (3) adversely affects the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.~~

~~(4)~~(3) A person may seek the relief provided for in subsection (2) without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this subsection (3) must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate.

~~(5)~~(4) The court may issue a temporary restraining order for a period not to exceed 21 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if an order is not issued until the time for responding has elapsed.

~~(6)~~(5) The party against whom a temporary injunction is sought must be served with notice and a copy of the motion and is entitled to a hearing on the motion. A response may be filed within 21 days after service of notice of motion or at the time specified in the temporary restraining order.

~~(7)~~(6) At the time of the hearing, the court shall:

(a) inform both parties that the temporary injunction may contain a provision or provisions that limit the rights of one or both parties relating to firearms under state law or a provision or provisions that may subject one or both parties to state or federal laws that limit their rights relating to firearms; and

(b) determine whether good cause exists for the injunction to continue for 1 year.

~~(8)~~(7) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance, temporary child support, or temporary family support in amounts and on terms just and proper in the circumstance.

~~(9)~~(8) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

(a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(b) terminates upon order of the court or when the petition is voluntarily dismissed and, in the case of a temporary family support order, upon entry of the decree of dissolution; and

(c) when issued under this section, must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626".~~"~~

~~(10)~~(9) When the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld except by order of the court for good cause shown.

~~(11)~~(10) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan administrator of the plan for which benefits are being distributed by the order, the child support enforcement division, the parties, and each party's counsel of record."

NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 40, chapter 4, part 1, and the provisions of Title 40, chapter 4, part 1, apply to [section 1].

- END -

HOUSE BILL NO. 164

INTRODUCED BY C. KEOGH, S. GREEF

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING LAWS REGARDING TEMPORARY AUTOMATIC DOMESTIC RELATIONS ORDERS IN INVALIDITY OF MARRIAGE, DISSOLUTION OF MARRIAGE, AND LEGAL SEPARATION PROCEEDINGS; PROVIDING FOR THE ISSUANCE OF AUTOMATIC ECONOMIC RESTRAINING ORDERS; AND AMENDING SECTIONS 19-2-801, 40-4-105, AND 40-4-121, MCA.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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"AUTOMATIC ECONOMIC RESTRAINING ORDER

It is hereby ordered:

(1) The parties are restrained from transferring, encumbering, concealing, or in any way disposing of, without the written consent of the other party or an order of the court, any marital property, except:

(a) for expenses necessary to reasonably maintain the marital standard of living or for the necessities of life, such as food, clothing, shelter, necessary health care expenses, transportation to and from work, and child care, taking into consideration additional living expenses arising out of a party obtaining a second household and current available income;

(b) in the customary and usual course of operating an existing business; or

(c) for the purpose of paying a reasonable amount for professional fees and costs relating to a proceeding under Title 40, chapter 1, part 4, Title 40, chapter 4, or Title 40, chapter 15.

(2) Each party shall file a notice with the court of any proposed extraordinary expenditure, proposed revocation of a nonprobate transfer, or proposed elimination of a right of survivorship to property at least 14 days before the action is taken.

(a) The notice must include:

(i) the proposed action and when the action is intended to occur;

(ii) how the proposed action may impact the marital estate; and

(iii) why the proposed action is necessary at that time.

(b) The notice is not sufficient unless the notice contains the following statement: "The moving party's proposed action will be permitted without further proceedings or order of the court unless within 14 days of the date of filing of the notice you file with the court and serve on all persons entitled to notice a response objecting to the proposed action, which states the reasons for your objection."

(c) If the other party files an objection to the proposed action before the expiration of the 14-day period, the party proposing to take the action is prohibited from taking the proposed action until the court rules on the proposed action.

(d) The burden of justifying the proposed action is on the party proposing the action. The court may award reasonable attorney fees if a party makes an unreasonable request for or an unreasonable objection to the proposed action.

(e) A "nonprobate transfer" means an instrument, other than a will, that makes a transfer of property on death, including a revocable trust, a pay-on-death account in a financial institution, a transfer on death registration of personal property, or a revocable transfer on death deed.

(3) The parties are restrained from:

(a) canceling jointly held credit cards or terminating signatory authority of the other party on a credit card;

(b) incurring unreasonable debt, including but not limited to further borrowing against any credit line secured by the family residence, further encumbrancing of any assets, or unreasonably using credit cards or cash advances against credit cards, except as provided for in subsections (1)(a) through (1)(c) or subsection (2);

(c) except as allowed by subsections (1)(a) through (1)(c) or subsection (2), making any withdrawal for any purpose or borrowing from any deferred compensation, retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account;

(d) except as allowed by subsections (1)(a) through (1)(c) or subsection (2), withdrawing or borrowing in any manner all or any part of the cash surrender value of any life insurance policies on either party or any of their children;

(e) changing or in any manner altering the beneficiary designation on any life insurance policies on either party or their children or changing or in any manner altering the beneficiary on any other account or asset;

(f) canceling, altering, or allowing to lapse any existing property, life, automobile, or health insurance policies insuring the parties' or children's property or persons;

(g) negotiating any instrument, check, draft, income tax refund, insurance payment, or dividends payable jointly to the parties or individually to the other party without the personal signature or prior written consent of the other party;

(h) opening, diverting, or withholding mail, E-MAIL, OR OTHER ELECTRONIC COMMUNICATIONS addressed to the other party, except a party may open mail, E-MAIL, OR OTHER ELECTRONIC COMMUNICATIONS addressed to both parties or ~~file~~ SUBMIT a notice of change of the party's individual ~~mailing~~ MAIL, E-MAIL, OR OTHER ELECTRONIC address; and

(i) without objectively reasonable justification, intentionally or knowingly damaging or destroying the property of the parties or of either party during the pendency of this action, specifically including but not limited to any electronically stored materials, electronic communications, or financial records, without order of the court or written consent of the other party.

(4) Unless otherwise ordered by the court, a party is not restrained from:

(a) creating, modifying, or revoking a will;

(b) revoking or changing a power of attorney; or

(c) creating an unfunded revocable or irrevocable trust.

(5) This order does not adversely affect the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of this order.

(6) The court may expand, limit, modify, or revoke this order, and nothing prevents either party from requesting such relief. Furthermore, the parties, with joint agreement, may waive in writing some or all of the provisions of this order.

(7) The parties shall serve preliminary financial disclosures within 60 days of service of the petition for dissolution, declaration of invalidity of marriage, or legal separation pursuant to 40-4-252.

(8) This order is binding on the petitioner on filing of the petition, and this order is binding on the respondent on service of the petition.

(9) In issuing any temporary orders or in a final decree, the court may consider any action taken by the petitioner within a reasonable time prior to filing of the petition that would otherwise have constituted a violation of this order had this order been issued at the time.

(10) Except as otherwise ordered by the court, this order is dissolved on dismissal of the action or granting of the declaration of invalidity, dissolution of marriage, legal separation, or other final order.

(11) Failure to follow this automatic economic restraining order is subject to enforcement by the court, on a motion to the court. The court may issue any appropriate enforcement order as set forth in [section 1(4)], including, if appropriate, sanctions and all remedies for contempt of court."

(2) An automatic economic restraining order entered pursuant to this section, unless otherwise ordered by the court, is dissolved upon dismissal of the action or granting of the petition for declaration of invalidity, dissolution of marriage, legal separation, or other final order.

(3) Nothing in this section precludes a party from applying to the court for an order to expand, limit, modify, or revoke the automatic economic restraining order.

(4) If a party fails to comply with the automatic economic restraining order, the other party may move the court to grant an appropriate order, including, if appropriate, sanctions and all remedies for contempt of court.

Section 2. Section 19-2-801, MCA, is amended to read:

"**19-2-801. Designation of beneficiary.** (1) In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, estate of the payment recipient, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership form provided by the board.

(2) Unless otherwise provided by this title or by a valid temporary restraining order issued pursuant to 40-4-121, an order issued pursuant to [section 1], or an order issued pursuant to Title 40, chapter 15, a member

or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership form provided by the board.

(3) If a person returns to covered employment in the same retirement system pursuant to 19-2-603, the person shall complete a new membership form and file it as provided in subsection (2). However, until the new membership form is filed, the board shall reference the membership form executed by the person prior to initial termination of membership for the same purposes as prior to termination. Beneficiaries designated on that membership form continue to be beneficiaries until the new membership form is filed.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), the beneficiary designation on the most recent membership form filed with the board is effective for all purposes until the member retires.

(b) A member may elect to either override or retain the member's existing beneficiary designation when completing a membership form for temporary or secondary employment with another employer within the same Title 19 retirement system.

(c) When a member retires, the designated beneficiaries or contingent annuitants named on the retirement application become effective.

(5) If a statutory or designated beneficiary predeceases the member or payment recipient, the predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts proportional to each remaining statutory or designated beneficiary's original share.

(6) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient.

(7) A contingent annuitant of a retired member who elected option 2, 3, or 4 pursuant to 19-3-1501, 19-5-701, 19-7-1001, or 19-8-801 may not renounce the contingent annuitant's interest in the payment rights of the member."

Section 3. Section 40-4-105, MCA, is amended to read:

"**40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses.** (1) The verified petition in a proceeding for dissolution of marriage or legal separation must allege that the marriage is irretrievably broken and must set forth:

(a) the age, occupation, and residence of each party and the party's length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days preceding the commencement of this proceeding; or

(ii) there is serious marital discord that adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support of the children and maintenance of a spouse;

(f) a proposed parenting plan, if applicable; ~~and~~

(g) the relief sought; and

(h) the petitioner's acknowledgment that the automatic economic restraining order provided for in [section 1] applies to the petitioner on filing of the petition with the clerk of the district court.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 21 days after the date of service file a verified response. A decree may not be entered until 21 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

[(6) The social security number, if known, of a person subject to a decree of dissolution or a support order must be recorded in the records relating to the matter. The social security number may be included in the state case registry and vital statistics reporting form filed pursuant to 40-5-908(1). The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(7) Documents filed before the court containing financial account information must comply with the privacy protection requirements of Rule 5.2 of the Montana Rules of Civil Procedure. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999; sec. 12, Ch. 88, L. 2013.)"

Section 4. Section 40-4-121, MCA, is amended to read:

"**40-4-121. Temporary order for maintenance or support, temporary injunction, or temporary restraining order.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance, temporary support of a child of the marriage entitled to support, or a temporary family support order. When a party is receiving public assistance, as defined in 40-5-201, for the minor children at issue or when a party receives public assistance during the life of a temporary family support order, the temporary family support order must designate separately the amounts of temporary child support and temporary maintenance, if any. The temporary child support order or the designated child support portion of the family support order must be determined as required in 40-4-204. The motion must be accompanied by an affidavit setting forth the factual basis for the motion, the amounts requested, a list of marital estate liabilities, a statement of sources of income of the parties and of a child of the marriage entitled to support, and, in the case of a motion for a temporary family support order, a proposal designating the party responsible for paying each liability. If ordered by a court, a temporary family support order must, without prejudice, direct one or both parties to pay, out of certain income sources, liabilities of the marital estate during the pendency of the action, including maintenance liabilities for a party or support of a child of the marriage entitled to support. If income sources are insufficient to meet the marital estate periodic liabilities, the temporary family support order may direct that certain liabilities be paid from assets of the marital estate. At any time during the proceedings, the court may order any temporary family support payments to be designated as temporary maintenance, temporary child support, or partial property distribution, retroactive to the date of the motion for a temporary family support order. When a party obtains public assistance, as defined in 40-5-201, or applies for services under Title IV-D of the Social Security Act, after the court has issued a temporary family support order, the petitioner shall promptly move the court for designation of the parts, if any, of the temporary family support order that are maintenance and child

support and the court shall promptly so designate, determining the child support obligation as required in 40-4-204.

(2) As a part of a motion for temporary maintenance, temporary support of a child, or a temporary family support order or by independent motion accompanied by affidavit, either party may request that the court issue a temporary injunction for any of the following relief:

(a) ~~restraining a person from transferring, encumbering, concealing, or otherwise disposing of any property, except in the usual course of business or for the necessities of life, and if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued~~ restricting, enhancing, ordering, or otherwise modifying or reaffirming the restrained or permitted provisions of the temporary economic restraining order pursuant to [section 1];

~~(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered;~~

~~(c)~~(b) enjoining a party from molesting or disturbing the peace of the other party or of any family member or from stalking, as defined in 45-5-220;

~~(d)~~(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

~~(e)~~(d) enjoining a party from removing a child from the jurisdiction of the court;

~~(f)~~(e) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment;

~~(g)~~(f) providing other injunctive relief proper in the circumstances; and

~~(h)~~(g) providing additional relief available under Title 40, chapter 15.

~~(3) When the clerk of the district court issues a summons pursuant to this chapter, the clerk shall issue and include with the summons a temporary restraining order:~~

~~(a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether jointly or separately held, without either the consent of the other party or an order of the court, except in the usual course of business or for the necessities of life. The restraining order must require each party to notify the other party of any proposed extraordinary expenditures at~~

~~least 5 business days before incurring the expenditures and to account to the court for all extraordinary expenditures made after service of the summons. However, the restraining order may not preclude either party from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.~~

~~(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered. However, nothing in this subsection (3) adversely affects the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.~~

~~(4)~~(3) A person may seek the relief provided for in subsection (2) without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this subsection (3) must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate.

~~(5)~~(4) The court may issue a temporary restraining order for a period not to exceed 21 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if an order is not issued until the time for responding has elapsed.

~~(6)~~(5) The party against whom a temporary injunction is sought must be served with notice and a copy of the motion and is entitled to a hearing on the motion. A response may be filed within 21 days after service of notice of motion or at the time specified in the temporary restraining order.

~~(7)~~(6) At the time of the hearing, the court shall:

(a) inform both parties that the temporary injunction may contain a provision or provisions that limit the rights of one or both parties relating to firearms under state law or a provision or provisions that may subject one or both parties to state or federal laws that limit their rights relating to firearms; and

(b) determine whether good cause exists for the injunction to continue for 1 year.

~~(8)~~(7) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance, temporary child support, or temporary

family support in amounts and on terms just and proper in the circumstance.

~~(9)~~(8) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

(a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(b) terminates upon order of the court or when the petition is voluntarily dismissed and, in the case of a temporary family support order, upon entry of the decree of dissolution; and

(c) when issued under this section, must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626".~~"~~

~~(10)~~(9) When the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld except by order of the court for good cause shown.

~~(11)~~(10) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan administrator of the plan for which benefits are being distributed by the order, the child support enforcement division, the parties, and each party's counsel of record."

NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 40, chapter 4, part 1, and the provisions of Title 40, chapter 4, part 1, apply to [section 1].

- END -

AN ACT REVISING LAWS REGARDING TEMPORARY AUTOMATIC DOMESTIC RELATIONS ORDERS IN INVALIDITY OF MARRIAGE, DISSOLUTION OF MARRIAGE, AND LEGAL SEPARATION PROCEEDINGS; PROVIDING FOR THE ISSUANCE OF AUTOMATIC ECONOMIC RESTRAINING ORDERS; AND AMENDING SECTIONS 19-2-801, 40-4-105, AND 40-4-121, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Automatic economic restraining order. (1) On the filing of a petition for declaration of invalidity of marriage, a petition for dissolution of marriage, or a petition for legal separation, the clerk of the district court shall issue a summons and shall include with the summons an automatic economic restraining order that provides as follows:

"AUTOMATIC ECONOMIC RESTRAINING ORDER

It is hereby ordered:

(1) The parties are restrained from transferring, encumbering, concealing, or in any way disposing of, without the written consent of the other party or an order of the court, any marital property, except:

(a) for expenses necessary to reasonably maintain the marital standard of living or for the necessities of life, such as food, clothing, shelter, necessary health care expenses, transportation to and from work, and child care, taking into consideration additional living expenses arising out of a party obtaining a second household and current available income;

(b) in the customary and usual course of operating an existing business; or

(c) for the purpose of paying a reasonable amount for professional fees and costs relating to a proceeding under Title 40, chapter 1, part 4, Title 40, chapter 4, or Title 40, chapter 15.

(2) Each party shall file a notice with the court of any proposed extraordinary expenditure, proposed revocation of a nonprobate transfer, or proposed elimination of a right of survivorship to property at least 14

days before the action is taken.

(a) The notice must include:

(i) the proposed action and when the action is intended to occur;

(ii) how the proposed action may impact the marital estate; and

(iii) why the proposed action is necessary at that time.

(b) The notice is not sufficient unless the notice contains the following statement: "The moving party's proposed action will be permitted without further proceedings or order of the court unless within 14 days of the date of filing of the notice you file with the court and serve on all persons entitled to notice a response objecting to the proposed action, which states the reasons for your objection."

(c) If the other party files an objection to the proposed action before the expiration of the 14-day period, the party proposing to take the action is prohibited from taking the proposed action until the court rules on the proposed action.

(d) The burden of justifying the proposed action is on the party proposing the action. The court may award reasonable attorney fees if a party makes an unreasonable request for or an unreasonable objection to the proposed action.

(e) A "nonprobate transfer" means an instrument, other than a will, that makes a transfer of property on death, including a revocable trust, a pay-on-death account in a financial institution, a transfer on death registration of personal property, or a revocable transfer on death deed.

(3) The parties are restrained from:

(a) canceling jointly held credit cards or terminating signatory authority of the other party on a credit card;

(b) incurring unreasonable debt, including but not limited to further borrowing against any credit line secured by the family residence, further encumbrancing of any assets, or unreasonably using credit cards or cash advances against credit cards, except as provided for in subsections (1)(a) through (1)(c) or subsection (2);

(c) except as allowed by subsections (1)(a) through (1)(c) or subsection (2), making any withdrawal for any purpose or borrowing from any deferred compensation, retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh

account;

(d) except as allowed by subsections (1)(a) through (1)(c) or subsection (2), withdrawing or borrowing in any manner all or any part of the cash surrender value of any life insurance policies on either party or any of their children;

(e) changing or in any manner altering the beneficiary designation on any life insurance policies on either party or their children or changing or in any manner altering the beneficiary on any other account or asset;

(f) canceling, altering, or allowing to lapse any existing property, life, automobile, or health insurance policies insuring the parties' or children's property or persons;

(g) negotiating any instrument, check, draft, income tax refund, insurance payment, or dividends payable jointly to the parties or individually to the other party without the personal signature or prior written consent of the other party;

(h) opening, diverting, or withholding mail, e-mail, or other electronic communications addressed to the other party, except a party may open mail, e-mail, or other electronic communications addressed to both parties or submit a notice of change of the party's individual mail, e-mail, or other electronic address; and

(i) without objectively reasonable justification, intentionally or knowingly damaging or destroying the property of the parties or of either party during the pendency of this action, specifically including but not limited to any electronically stored materials, electronic communications, or financial records, without order of the court or written consent of the other party.

(4) Unless otherwise ordered by the court, a party is not restrained from:

(a) creating, modifying, or revoking a will;

(b) revoking or changing a power of attorney; or

(c) creating an unfunded revocable or irrevocable trust.

(5) This order does not adversely affect the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of this order.

(6) The court may expand, limit, modify, or revoke this order, and nothing prevents either party from requesting such relief. Furthermore, the parties, with joint agreement, may waive in writing some or all of the provisions of this order.

(7) The parties shall serve preliminary financial disclosures within 60 days of service of the petition for dissolution, declaration of invalidity of marriage, or legal separation pursuant to 40-4-252.

(8) This order is binding on the petitioner on filing of the petition, and this order is binding on the respondent on service of the petition.

(9) In issuing any temporary orders or in a final decree, the court may consider any action taken by the petitioner within a reasonable time prior to filing of the petition that would otherwise have constituted a violation of this order had this order been issued at the time.

(10) Except as otherwise ordered by the court, this order is dissolved on dismissal of the action or granting of the declaration of invalidity, dissolution of marriage, legal separation, or other final order.

(11) Failure to follow this automatic economic restraining order is subject to enforcement by the court, on a motion to the court. The court may issue any appropriate enforcement order as set forth in [section 1(4)], including, if appropriate, sanctions and all remedies for contempt of court."

(2) An automatic economic restraining order entered pursuant to this section, unless otherwise ordered by the court, is dissolved upon dismissal of the action or granting of the petition for declaration of invalidity, dissolution of marriage, legal separation, or other final order.

(3) Nothing in this section precludes a party from applying to the court for an order to expand, limit, modify, or revoke the automatic economic restraining order.

(4) If a party fails to comply with the automatic economic restraining order, the other party may move the court to grant an appropriate order, including, if appropriate, sanctions and all remedies for contempt of court.

Section 2. Section 19-2-801, MCA, is amended to read:

"**19-2-801. Designation of beneficiary.** (1) In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, estate of the payment recipient, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership form provided by the board.

(2) Unless otherwise provided by this title or by a valid temporary restraining order issued pursuant to 40-4-121, an order issued pursuant to [section 1], or an order issued pursuant to Title 40, chapter 15, a member

or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership form provided by the board.

(3) If a person returns to covered employment in the same retirement system pursuant to 19-2-603, the person shall complete a new membership form and file it as provided in subsection (2). However, until the new membership form is filed, the board shall reference the membership form executed by the person prior to initial termination of membership for the same purposes as prior to termination. Beneficiaries designated on that membership form continue to be beneficiaries until the new membership form is filed.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), the beneficiary designation on the most recent membership form filed with the board is effective for all purposes until the member retires.

(b) A member may elect to either override or retain the member's existing beneficiary designation when completing a membership form for temporary or secondary employment with another employer within the same Title 19 retirement system.

(c) When a member retires, the designated beneficiaries or contingent annuitants named on the retirement application become effective.

(5) If a statutory or designated beneficiary predeceases the member or payment recipient, the predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts proportional to each remaining statutory or designated beneficiary's original share.

(6) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient.

(7) A contingent annuitant of a retired member who elected option 2, 3, or 4 pursuant to 19-3-1501, 19-5-701, 19-7-1001, or 19-8-801 may not renounce the contingent annuitant's interest in the payment rights of the member."

Section 3. Section 40-4-105, MCA, is amended to read:

"**40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses.** (1) The verified petition in a proceeding for dissolution of marriage or legal separation must allege that the marriage is irretrievably broken and must set forth:

(a) the age, occupation, and residence of each party and the party's length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days preceding the commencement of this proceeding; or

(ii) there is serious marital discord that adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support of the children and maintenance of a spouse;

(f) a proposed parenting plan, if applicable; ~~and~~

(g) the relief sought; and

(h) the petitioner's acknowledgment that the automatic economic restraining order provided for in [section 1] applies to the petitioner on filing of the petition with the clerk of the district court.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 21 days after the date of service file a verified response. A decree may not be entered until 21 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

[(6) The social security number, if known, of a person subject to a decree of dissolution or a support order must be recorded in the records relating to the matter. The social security number may be included in the state case registry and vital statistics reporting form filed pursuant to 40-5-908(1). The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(7) Documents filed before the court containing financial account information must comply with the privacy protection requirements of Rule 5.2 of the Montana Rules of Civil Procedure. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999; sec. 12, Ch. 88, L. 2013.)"

Section 4. Section 40-4-121, MCA, is amended to read:

"**40-4-121. Temporary order for maintenance or support, temporary injunction, or temporary restraining order.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance, temporary support of a child of the marriage entitled to support, or a temporary family support order. When a party is receiving public assistance, as defined in 40-5-201, for the minor children at issue or when a party receives public assistance during the life of a temporary family support order, the temporary family support order must designate separately the amounts of temporary child support and temporary maintenance, if any. The temporary child support order or the designated child support portion of the family support order must be determined as required in 40-4-204. The motion must be accompanied by an affidavit setting forth the factual basis for the motion, the amounts requested, a list of marital estate liabilities, a statement of sources of income of the parties and of a child of the marriage entitled to support, and, in the case of a motion for a temporary family support order, a proposal designating the party responsible for paying each liability. If ordered by a court, a temporary family support order must, without prejudice, direct one or both parties to pay, out of certain income sources, liabilities of the marital estate during the pendency of the action, including maintenance liabilities for a party or support of a child of the marriage entitled to support. If income sources are insufficient to meet the marital estate periodic liabilities, the temporary family support order may direct that certain liabilities be paid from assets of the marital estate. At any time during the proceedings, the court may order any temporary family support payments to be designated as temporary maintenance, temporary child support, or partial property distribution, retroactive to the date of the motion for a temporary family support order. When a party obtains public assistance, as defined in 40-5-201, or applies for services under Title IV-D of the Social Security Act, after the court has issued a temporary family support order, the petitioner shall promptly move the court for designation of the parts, if any, of the temporary family support order that are maintenance and child

support and the court shall promptly so designate, determining the child support obligation as required in 40-4-204.

(2) As a part of a motion for temporary maintenance, temporary support of a child, or a temporary family support order or by independent motion accompanied by affidavit, either party may request that the court issue a temporary injunction for any of the following relief:

(a) ~~restraining a person from transferring, encumbering, concealing, or otherwise disposing of any property, except in the usual course of business or for the necessities of life, and if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued~~ restricting, enhancing, ordering, or otherwise modifying or reaffirming the restrained or permitted provisions of the temporary economic restraining order pursuant to [section 1];

~~(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered;~~

~~(c)~~(b) enjoining a party from molesting or disturbing the peace of the other party or of any family member or from stalking, as defined in 45-5-220;

~~(d)~~(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

~~(e)~~(d) enjoining a party from removing a child from the jurisdiction of the court;

~~(f)~~(e) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment;

~~(g)~~(f) providing other injunctive relief proper in the circumstances; and

~~(h)~~(g) providing additional relief available under Title 40, chapter 15.

~~(3) When the clerk of the district court issues a summons pursuant to this chapter, the clerk shall issue and include with the summons a temporary restraining order:~~

~~(a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether jointly or separately held, without either the consent of the other party or an order of the court, except in the usual course of business or for the necessities of life. The restraining order must require each party to notify the other party of any proposed extraordinary expenditures at~~

~~least 5 business days before incurring the expenditures and to account to the court for all extraordinary expenditures made after service of the summons. However, the restraining order may not preclude either party from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.~~

~~(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered. However, nothing in this subsection (3) adversely affects the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.~~

~~(4)~~(3) A person may seek the relief provided for in subsection (2) without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this subsection (3) must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate.

~~(5)~~(4) The court may issue a temporary restraining order for a period not to exceed 21 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if an order is not issued until the time for responding has elapsed.

~~(6)~~(5) The party against whom a temporary injunction is sought must be served with notice and a copy of the motion and is entitled to a hearing on the motion. A response may be filed within 21 days after service of notice of motion or at the time specified in the temporary restraining order.

~~(7)~~(6) At the time of the hearing, the court shall:

(a) inform both parties that the temporary injunction may contain a provision or provisions that limit the rights of one or both parties relating to firearms under state law or a provision or provisions that may subject one or both parties to state or federal laws that limit their rights relating to firearms; and

(b) determine whether good cause exists for the injunction to continue for 1 year.

~~(8)~~(7) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance, temporary child support, or temporary

family support in amounts and on terms just and proper in the circumstance.

~~(9)~~(8) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

(a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(b) terminates upon order of the court or when the petition is voluntarily dismissed and, in the case of a temporary family support order, upon entry of the decree of dissolution; and

(c) when issued under this section, must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626"~~."~~

~~(10)~~(9) When the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld except by order of the court for good cause shown.

~~(11)~~(10) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan administrator of the plan for which benefits are being distributed by the order, the child support enforcement division, the parties, and each party's counsel of record."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 40, chapter 4, part 1, and the provisions of Title 40, chapter 4, part 1, apply to [section 1].

- END -

I hereby certify that the within bill,

HB 164, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____day

of_____, 2021.

_____

President of the Senate

Signed this _____day

of_____, 2021.

HOUSE BILL NO. 164

INTRODUCED BY C. KEOGH, S. GREEF

AN ACT REVISING LAWS REGARDING TEMPORARY AUTOMATIC DOMESTIC RELATIONS ORDERS IN INVALIDITY OF MARRIAGE, DISSOLUTION OF MARRIAGE, AND LEGAL SEPARATION PROCEEDINGS; PROVIDING FOR THE ISSUANCE OF AUTOMATIC ECONOMIC RESTRAINING ORDERS; AND AMENDING SECTIONS 19-2-801, 40-4-105, AND 40-4-121, MCA.

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill #	HB0164	**Title:**	Revise temporary automatic domestic relations orders
Primary Sponsor:	Keogh, Connie	**Status:**	As Introduced

☐Significant Local Gov Impact ☐Needs to be included in HB 2 ☐Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance:	$0	$0	$0	$0

Description of fiscal impact: This bill has no fiscal impact to the state.

FISCAL ANALYSIS

Assumptions:

1. The Judicial branch already issues restraining orders.

AUTHORIZED BY SPONSOR

Sponsor's Initials	Date	Budget Director's Initials	Date
	1/19/21	FA	1/19/21

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Barry Usher, on January 25, 2021 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Barry Usher, Chair (R)
Rep. Kathy Kelker, Vice Chair (D)
Rep. Amy Regier, Vice Chair (R)
Rep. Seth Berglee (R)
Rep. Laurie Bishop (D)
Rep. Jennifer Carlson (R)
Rep. Robert Farris-Olsen (D)
Rep. Frank Fleming (R)
Rep. Tom France (D)
Rep. Jane Gillette (R)
Rep. Donavon Hawk (D)
Rep. Jedediah Hinkle (R)
Rep. Brandon Ler (R)
Rep. Bob Phalen (R)
Rep. Derek Skees (R)
Rep. Ed Stafman (D)
Rep. Mallerie Stromswold (R)
Rep. Danny Tenenbaum (D)

Members Excused:
Rep. Dennis R. Lenz (R)

Members Absent: None

Staff Present:
Lydia Balian, Committee Secretary
Rachel Weiss, Legislative Branch
Hallie Swain, Remote Meeting Coordinator

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	HB 164, 1/14/2021; SB 19, 1/14/2021; SB 50, 1/14/2021
Executive Action on:	HB 36; SB 19

HEARING ON HB 164

Opening Statement by Sponsor:
08:04:59 Rep. Connie Keogh (D), HD 91, opened the hearing on HB 164, Revise temporary automatic domestic relations orders.

08:05:30 Rep. Skees and Rep. Stromswold left the meeting.

Proponents' Testimony:
08:08:34 Debra Steigerwalt, self
08:17:37 Mars Scott, Montana State Bar Family Law Section
08:22:25 Gail Goheen, Montana State Bar Family Law Section
EXHIBIT(juh16a01)

Opponents' Testimony: None

Informational Testimony:
08:26:52 Tal Goldin, Montana Legal Services Association (MLSA)
EXHIBIT(juh16a02)

Questions from Committee Members and Responses:
08:28:33 Vice Chair Kelker
08:29:58 Gail Goheen, Montana State Bar Family Law Section
08:30:51 Rep. Carlson
08:31:30 Tal Goldin, MLSA
08:31:41 Rep. Stromswold rejoined the meeting.
08:35:20 Rep. Berglee
08:35:59 Tal Goldin, MLSA
08:36:35 Rep. Berglee
08:36:44 Rep. Keogh
08:37:16 Mars Scott, Montana State Bar Family Law Association
08:37:52 Rep. Berglee
08:38:25 Mars Scott, Montana State Bar Family Law Association
08:38:49 Debra Steigerwalt, self

Closing by Sponsor:
08:40:06 Rep. Keogh

HEARING ON SB 19

Opening Statement by Sponsor:
08:41:39 Sen. Keith Regier (R), SD 3, opened the hearing on SB 19, Revise staffing and structure of Board of Crime Control.

Proponents' Testimony:
08:45:03 Shelby DeMars, Montana Police Protective Association (MPPA)
08:45:47 Adrianne Cotton, self
08:48:06 Alan Doane, Montana Department of Justice (DOJ)
08:48:24 Nanette Gilbertson, Montana Sheriffs and Peace Officers Association (MSPOA); Montana County Attorneys' Association (MCAA)

Opponents' Testimony: None

Informational Testimony:
08:49:48 Natalia Bowser, Montana Department of Corrections (DOC)
08:50:16 Beth McLaughlin, Montana Board of Crime Control (MBCC)

Questions from Committee Members and Responses:
08:51:06 Rep. J. Hinkle
08:51:36 Sen. Regier

Closing by Sponsor:
08:52:06 Sen. Regier

HEARING ON SB 50

Opening Statement by Sponsor:
08:53:34 Sen. Diane Sands (D), SD 49, opened the hearing on SB 50, Revise membership of the Board of Crime Control.

Proponents' Testimony:
08:59:03 Nanette Gilberston, Montana Sheriffs' and Peace Officers Association (MSPOA); Montana County Attorneys' Association (MCAA)
09:00:03 Kelsen Young, self
09:06:04 Stacey Umhey, self
09:07:54 Sen. Gross
09:08:36 Chair Usher left the meeting.
09:08:43 Vice Chair Regier assumed the chair.

Opponents' Testimony:
09:09:18 Jennae Weber, self
09:12:47 Chair Usher rejoined the meeting.
09:15:03 Raye Newmeyer, self

Informational Testimony: None

Questions from Committee Members and Responses:
09:15:50 Rep. Tenenbaum
09:16:35 Kelsen Young, self
09:17:46 Rep. J. Hinkle
09:20:06 Kelsen Young, self

Closing by Sponsor:
09:21:40 Sen. Sands

09:24:15 Recess
10:02:47 Reconvened

10:03:02 Chair Usher

EXECUTIVE ACTION ON HB 36

10:03:57 **Motion:** Rep. A. Regier moved that **HB 36 DO PASS**.

Discussion:
10:04:28 Chair Usher
10:04:37 Vice Chair Kelker
10:05:15 Rep. Carlson
10:05:53 Rep. Gillette
10:06:15 Chair Usher

10:07:03 **Vote:** Motion carried unanimously by voice vote. Rep. Lenz and Rep. Skees voted by proxy.

EXECUTIVE ACTION ON HB 116

10:07:25 **Motion:** Rep. A. Regier moved that **HB 116 DO PASS**.

Discussion:
10:07:51 Rep. Carlson
10:08:42 Rep. Berglee

10:08:53 **Substitute Motion/Vote:** Rep. Carlson made a substitute motion that **HB 116 BE POSTPONED**. Substitute Motion carried unanimously by voice vote.

Discussion:
10:08:57 Rep. Farris- Olsen
10:09:23 Chair Usher

EXECUTIVE ACTION ON SB 19

10:10:26 **Motion:** Rep. A. Regier moved that **SB 19 BE CONCURRED IN**.

Discussion:
10:11:10 Rep. Berglee

10:11:25 **Vote:** Motion carried unanimously by voice vote. Rep. Lenz and Rep. Skees voted by proxy. Rep. Usher will carry the bill.

10:12:27 Rep. Bishop
10:12:51 Chair Usher

ADJOURNMENT

Adjournment: 10:14:48

Lydia Balian, Secretary

lb

Additional Documents:

EXHIBIT(juh16aad.pdf)

Montana State Legislature

2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Any other type of documents such as:**
  - **@ Petitions {if any} Emails, all documents given to Committee Secretary after meeting.**

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION

HOUSE JUDICIARY COMMITTEE

Date: Monday, January 25, 2021 **Time:** 8:00 AM
Place: Capitol **Room:** 137

BILLS and RESOLUTIONS HEARD:

HB 164 - Revise temporary automatic domestic relations orders - Rep. Connie Keogh (D)
SB 19 - Revise staffing and structure of Board of Crime Control - Sen. Keith Regier (R)
SB 50 - Revise membership of the Board of Crime Control - Sen. Diane Sands (D)

EXECUTIVE ACTION TAKEN:

HB 36 - Do Pass
SB 19 - Be Concurred In

Comments:

REP. Barry Usher, Chair

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE: 1/25/21

NAME	PRESENT	ABSENT/EXCUSED
REP. USHER, CHAIR	✓	
REP. AMY REGIER, VICE CHAIR	✓	
REP. KELKER, VICE CHAIR	✓	
REP. BERGLEE	✓	
REP. BISHOP	✓	
REP. CARLSON	✓	
REP. FARRIS-OLSEN	✓	
REP. FLEMING	✓	
REP. FRANCE	✓	
REP. GILLETTE	✓	
REP. HAWK	✓	
REP. JEDEDIAH HINKLE	✓	
REP. LENZ	✓	
REP. LER		✓
REP. PHALEN	✓	
REP. SKEES	✓	
REP. STAFMAN	✓	
REP. STROMSWOLD	✓	
REP. TENENBAUM	✓	

19 MEMBERS

HOUSE STANDING COMMITTEE REPORT

January 25, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 36** (first reading copy -- white) **do pass**.

Signed: _____
Representative Barry Usher, Chair

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

HB0036001SC.hlc

1.25.21
JR 11:13AM

HOUSE STANDING COMMITTEE REPORT

January 25, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 19** (house second reading copy -- tan) **be concurred in**.

Signed: _____
Representative Barry Usher, Chair

To be carried by Representative Barry Usher

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

SB0019001SC17704.hlc

1.25.21
JR 11:12AM

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Regier.

BILL	AYE	NO
HB336	✓	
HB116 pass consideration	✓	
SB19	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. _____
for any amendments proposed on this date.

Rep. _____ Date 1/25/21
(Signature)

Rep. Lenz

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Regier.

BILL	AYE	NO
HB 316	✓	
~~HB 116~~ HB 116 pass consideration	✓	
SB 19	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. _____
for any amendments proposed on this date.

Rep. _____ Date 1/25/21
(Signature)

Rep. Skees

(2)

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Monday, January 25, 2021
SB 19 - Revise staffing and structure of Board of Crime Control
Sponsor: **Sen. Keith Regier (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Shelby DeMars	MT Police Protective Association	X		
Nanette Gilbertson	MT County Attorneys Assn	✓		
Nanette Gilbertson	MT Sheriffs & Peace Officers Assn.	✓		
ADRIANNE COTTON	SELF	X		
Alan Dorrance	DOJ	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

3

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Monday, January 25, 2021
SB 50 - Revise membership of the Board of Crime Control
Sponsor: **Sen. Diane Sands (D)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Raye Newmeyer	MSCOSA		X	
Nanette Gilbertson	MSPOA/MCAA	✓		
Janee Weber			X	
Jen Gross	SD 25	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Monday, January 25, 2021

HB 164 - Revise temporary automatic domestic relations orders

Sponsor: **Rep. Connie Keogh (D)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Montana State Legislature

WITNESS STATEMENTS

The following is an assortment of documents that are

witness statements.

[A witness statement is a signed document recording the evidence of a witness.

A definition "a written statement signed by a person which contains the evidence which that person would be allowed to give orally".]

WITNESS STATEMENT

Testimony HB 164

Before House Judiciary Committee

By Debra A. Steigerwalt

Good Morning, Chairman and Members of the Judiciary Committee. My name is Debra Steigerwalt. (S-T-E-I-G-E-R-W-A-L-T). I am an attorney. I have been an attorney since 1996. I am licensed in Montana, California, and Pennsylvania. I am a member of the Family Law Section of the State Bar of Montana and have been on the Family Law Section legislative committee since 2018. I was a staff attorney (also known as a law clerk) for Hon. James Haynes in Hamilton, MT for 8 years. I have been in private practice in Missoula since October 2018 at my firm Thompson & Steigerwalt. Connie Keogh is a Missoula representative and I really appreciate her help in carrying this bill, I appreciate Representative Greef's support in co-sponsoring this bill, and I appreciate the members of the committee for listening to what we have to say.

What I would like to do, is give just a brief overview of the bill, its history, and why we are here. As someone who worked for the district court for a long time, I can tell you that family law takes up a large portion of the Court's time. In divorces and child custody matters, many people represent themselves in Court, sometimes one person is represented, and sometimes both people are represented. Most of my private practice is in family law. In some cases there is an attorney on the other side, and in sometimes there is not. There tends to be a great need for pro bono and reduced fee attorneys in family law and a reluctance of attorneys who practice in other areas to take on those pro bono and reduced fee cases. Why? Clients are emotional, clients are getting advice and pressure from friends and relatives who are not attorneys and don't want to listen to you, the parties do things that enrage each other (sometimes by accident) and which take lots of time to work out, and the statutes have evolved over time and can be confusing.

One statute that is very confusing to attorneys, clients, and unrepresented litigants alike is 40-4-121, MCA, the statute that is the subject of HB 164. This statute started out back in 1975 when Montana adopted the Uniform Marriage and Divorce Act. Back then 40-4-121 had about 3 small paragraphs and a narrow subject matter. Today, the statute is a lot larger. New and necessary concepts were added to it, instead of putting those concepts in a separate section of the Montana Code Annotated by themselves.

One of those concepts in 40-4-121 is an "automatic economic restraining order." That was added to the statute in 1997. The idea with the automatic economic restraining order is that you don't want spouses going out and selling marital property and hiding the cash, cancelling insurance, running up debts, cutting off access to checking accounts, etc. And you want the spouses to know right away that they should not be doing that, so that the judge doesn't have to be involved and there is no delay.

The automatic order restraining order has worked well. But it needs to be updated, it needs to get its own section, and it needs to be accessible to everyone - people who are not represented, and attorneys who do not regularly practice in the area of family law.

Back in 2018, three very well-respected family law practitioners who had about 100 years of experience among them looked at the economic restraining order statutes from other states and identified ways to improve and modernize the economic restraining order language in Montana. And to keep 40-4-121 from getting even more complicated, they wanted the economic restraining order to have its own MCA section. Then – consulting with attorneys who have experience working with unrepresented litigants – they came up with the actual language of the automatic order that should be issued.

They included in the drafted order common issues, the process if issues came up, and what would happen if a spouse didn't follow the order. That way, if you don't have an attorney you can better understand what you are supposed to do when a common issue comes up. If you do have an attorney, you don't have to call your attorney with as many questions. And if you are a pro bono attorney who doesn't practice much in this area of the law, what needs to be done is very clear. It's uniform, it's an extensive resource for common problems, and it's accessible. Also, it should reduce the number of motions that are filed with the court, because what needs to be done will already be laid out in the automatic temporary economic restraining order.

Here is another bit of history. Back in 2019, we came to the legislature and tried to fix all of 40-4-121 all at once. That ended up involving too many issues and being very complicated. Not surprisingly, it didn't pass. We did get a lot of good feedback on the automatic temporary restraining order provisions, however. So, we decided to come back this year and just address the biggest issue – updating the automatic temporary economic restraining order and making it its own statute. And that is what you have before you today in HB 164.

The Family Law Section sent its proposal – now HB 164 – out for approval with the entire family law section last year. We are one of the largest and most active sections in the Montana State Bar and it was approved. Around the same time, the Family Law Section also sent this proposal to Beth McLaughlin at the Montana Supreme Court to get feedback from the Court and the judges and it was well received.

I hope that you folks will vote to pass HB 164 out of committee. The issuance of an effective automatic economic restraining order is a really important part of keeping divorce cases from going off the rails. Spouses have enough on their minds when they are going through a divorce. It is important that they have an updated and clear automatic economic restraining order at the start of the process.

Thank you for listening to my testimony today.

January 25, 2021

Mr. Chairman, Members of the Committee.

I'm Mars Scott, Chairperson of the Legislative Subcommittee of the Family Law Section of the State Bar of Montana. I've been a practicing attorney for over 40 years and I primarily practice family law. The Family Law Section of the State Bar of Montana has no political agenda. Our only agenda is to improve the quality of the practice of family law, and to make the legal process more efficient, more predictable, and more user friendly for those people going through a divorce. All of us on the Committee have represented both husbands and wives in divorce cases. All of us have been involved it custody disputes involving innocent children. In short, all of us have been on both sides of all issues. Our goal is to reduce the stress on litigants by having clear and understandable laws that objectively ease the stress on family law litigants. HB 164 is one of those bills that achieves that goal.

I was on the Committee that helped pass the law in 1997 to provide that an economic restraining order take effect automatically when a petition for dissolution is filed. In 1997, it was a novel idea to have an automatic restraining order imposed on the marital estate at the time a dissolution action was filed, but the need for such a statute was readily apparent because there were many cases where one party would significantly dissipate the marital estate with impunity while the case was pending. In other words, there was nothing stopping one party from spending all the money that the parties had so there would not be much left to distribute when the case finally came before a judge. After its passage in 1997, Montana had one of the most update laws for economic restraining orders, and generally this law has worked very well, but as time has gone by, and as family law practitioners have had many experiences with the application of this law, it needs to be updated because the law is not entirely clear as to exactly what financial activities are restrained and which ones are not restrained, which has resulted in court hearings to decide those issues.

For example, it was never entirely clear that a court could consider a person's new financial circumstances if they moved out of house and created a second household. This bill clarifies that a court can now consider the reality of a person's new living arrangement and the cost of maintaining two household while their divorce case is pending. Further, it is not entirely clear from the statute as to when a person filing the petition for dissolution is bound by the automatic restraining order. This bill cleans that up by making the petitioner bound by the automatic restraining order when the petition for dissolution is filed, which is logical but was simply not addressed in the 1997 law. There are also issues about whether a party can cancel joint credit cards, change their Will, max out credit lines, take out money against their retirement accounts and life insurance policies, or whether a spouse can open the other spouse's mail. All these issues are now specifically and thoughtfully addressed in this bill.

Another very important clarification in my opinion is that now one spouse cannot destroy marital estate property without consequence. I had a case where one spouse decided to break all the window in the family home. The other spouse called the police, but the police said they could do nothing because both spouses owned the residence and therefore it was theirs to destroy if they wanted. This bill stops spouses from destroying marital property without consequences, including destroying electronically stored information.

Some of these issues may seem minor, but they are not minor in divorce actions and the courts are asked to make rulings on these issues every day. HB 164 clarifies how these issues, and others, are to be handled by the parties thus reducing the number of motions to be filed with the courts.

Including these changes in the law will also make it easier for self-represented litigants to understand their rights and obligations in dissolution proceedings, again, reducing the number of motions filed with the courts.

We strongly urge passage of this bill.

Thank you.

Mars Scott
Chairperson of the Legislative Subcommittee of the Family Law Section of the State Bar of Montana

House Judiciary Zoom Testimony 01.25.2021

Bill	Name	Location	Email	Position	Affiliation
HB-164	**Rep. Connie Keogh**	**Missoula, Montana**		**Bill Sponsor**	
HB-164	**Proponents**				
HB-164	Gail Goheen	Corvallis, Montana	gail@goheenlaw.com	Proponent	Family Law Section of MT State Bar
HB-164	P. Mars Scott	Missoula, Montana	pmarsscott@pmarsscott.com	Proponent	Family Law Section of MT State Bar
HB-164	Debra Steigerwalt	Missoula, Montana	debbie@missoulafamilylaw.com	Proponent	
	Infomational Witness				
HB-164	Tal M. Goldin	Helena, Montana	tgoldin@mtlsa.org	Informational Witness	Montana Legal Services Association
SB-19	**Informational Witness**				
SB-19	Natalia Bowser	Helena, Montana	nbowser@mt.gov	Informational Witness	Crime Control Bureau-DOC
SB-19	Beth McLaughlin	Helena, Montana	Bmclaughlin@mt.gov	Informational Witness	MT Board of Crime Control
SB-50	**Senator Diane Sands**	**Missoula, Montana**		**Bill Sponsor**	
SB-50	**Proponent**				
SB-50	Kelsen Young	Helena, Montana	kyoung@mcadsv.com	Proponent	MT Coalition Against Domestic & Sexual Vio
SB-50	Stacey Umhey	Stevensville, Montana	sumhey@safeinthebitterroot.org	Proponent	

EXHIBIT 2
DATE 1/25/21
HB 164

COMMENTS OF

Tal M. Goldin, Co-Director of Advocacy

On behalf of Montana Legal Services Association

HB 164

January 25, 2021

House Judiciary Committee

Chairman Usher, members of the Committee, my name is Tal Goldin, T-A-L G-O-L-D-I-N, and I am an attorney and the Co-Director of Advocacy at Montana Legal Services Association, Montana's only general civil legal aid organization. I have practiced family law, amongst other areas of law, in this state for almost 12 years and with my co-director, supervise the legal work of over 20 attorneys helping Montanans living in poverty across our great state.

I am here today on HB164 on behalf of Montana Legal Services for informational purposes.

Montana Legal Services Association is a non-profit law firm with the mission of protecting and enhancing the civil legal rights of, and promoting systemic change for, Montanans living in poverty. We serve thousands of low-income Montanans each year, many of whom subsist under 150% of the federal poverty line, or about $39,000 per year for a family of four.

One of our largest areas of need is helping domestic violence survivors and other crime victims escape an abusive relationship. Some of these individuals are the victims of human trafficking and are in the relationship by force or coercion.

For many of our clients, escaping an abusive relationship means living in temporary housing at a domestic violence shelter after escaping their abuser with little more than the clothes on their backs. These individuals, most commonly women and children, frequently have no access to money, transportation, shelter, food, or clothing, unless they are provided those resources by the shelter or family member. Too often, an abusive spouse or partner will liquidate assets and clear out accounts while a family law matter is pending.

HB164 addresses these emergent issues by maintaining the financial status quo while parties proceed through a family law matter. HB164 makes only minimal substantive additions to existing law. Mostly, the bill makes existing law more effective, and helps minimize the work our district courts have to do resolving these emergent issues.

For many years, Montana Law has required that in a dissolution of marriage the clerk of district court issue what is commonly called a Temporary Economic Restraining Order with the summons when the case is filed. That law is codified at Montana Code Annotated § 40-4-121(3).

This Temporary Economic Restraining Order prohibits either party from selling, hiding, pawning, or taking a loan against property. It also prohibits either party from cancelling or making changes to insurance policies during this time, including life, health, auto, or disability coverage. At the end of the case, the economic restraining order is no longer in in place.

The existing law essentially has three exceptions:

- First, either party can take the prohibited actions if the other party agrees or if the court orders the action;

- Second, either party can use money of property for what the existing statute calls "the usual course of business or for the necessities of life."

- Third, either party can use money of property to pay what the current law calls "reasonable attorney fees in order to retain counsel in the proceeding."

As it's currently written the temporary economic restraining order only applies in cases for a dissolution of marriage or legal separation. Because of a likely oversight, it does not cover a third type of proceeding for a declaration of invalidity of marriage—what is sometimes called an annulment.

Before I turn to the specific proposals in HB164, I want to clarify one point to avoid confusion. There are two types of restraining orders common in family law cases. One is often called a temporary restraining order or order of protection. This type of order is used by a judge in cases of abuse or assault, to keep the abuser from contacting the victim in person or by other means.

The second type of temporary restraining order, the one that we are mostly talking about today relates only to economic matters and is issued automatically by the clerk of court, regardless of whether any type of abuse or assault is alleged.

HB164 makes several small revisions that have important impacts:

- New Section 1(a) (p.1, ln. 19-22) clarifies when the exceptions I noted earlier apply. The current statute does not define "the necessities of life." This is a common source of dispute and results in unnecessary litigation in front of the district courts. Too often, litigants capitalize on the ambiguities in the existing law, sell, hide, or dispose of property in violation of the order and, later, ask for forgiveness. By the time that happens, it is often too late to recover the money or property lost, especially for the low-income clients we represent.

- The introductory paragraph at lines 11-14 on Page 1 addresses the oversight I mentioned earlier, and makes clear that a temporary economic restraining order should issue in petitions for a declaration of invalidity of marriage, in addition to those seeking

a dissolution of marriage or legal separation. This makes good sense. Those three proceedings are essentially the same and deal with the same financial issues. A declaration of invalidity is an important remedy for human trafficking victims and others subjected to a coerced marriage.

- New Section 1(c), Page 1, Line 24, makes clear that marital money and assets can be used for the broader "professional fees" associated with these cases, where the existing law only allows for "reasonable attorney fees." That is important, because often the expenses in these case are more than just the cost of an attorney's time. Sometimes professionals need to testify about a child's best interests, the value of property or a business, or other matters that require expertise.

- The reference to Title 40, Chapter 15 on Page 1, Line 25, recognizes that those same types of professional fees could be incurred in order of protection matters and allows the survivor or crime victim to access funds for that purpose. For example, a survivor may need to retain a medical expert to testify that the type of injury they sustained are consistent with an assault and not likely accidental.

  For our clients, who are often prevented from earning income by their abuser, this access to funds allows the survivor to put on a fair case in court and have equal access to the justice system.

- Section 2, starting at Page 1, Line 26, details the process for using an exception. While the current law only requires 5 days' notice, the revision requires the party seeking to use an exception to notify the other party and the court and give the other party 14 days to object. This change is beneficial, because it requires the party seeking the exception to justify their reasoning and maintains the status quo until the 14 day period passes without objection. It also allows time to reach agreement on the issue.

- Section 3, staring at Page 2, Line 18 provides important clarifications on what is prohibited under the Economic Restraining Order. This prevents specific behaviors that historically are problematic in family law cases, including: racking up new debt once the divorce is filed, cancelling joint credit cards; or taking loans against or withdrawing funds from retirement accounts. Again, when these types of transactions occur, it is usually very difficult to get the money back and make the non-offending party whole again.

- New section 3(h) and (i), starting at Page 3, Line 12 address the common issues of one party opening or taking another party's mail and destruction of property and records in the course of a family law case. These privacy and record maintenance issues are important, particularly in abusive relationships.

- The change noted in Section 3 of the bill, at Page 6, Line 12, adding subsection (h) to Montana Code Annotated Section 40-4-105 is probably unnecessary. The language of the economic restraining order in Section 1 of the bill already makes clear that the order applies to both parties.

  If additional clarity is needed, adding that to the language of the order itself, rather than as a required component of the petition, would be more efficient. The reason for this is that changing the legal requirements for a petition would require attorneys, the Supreme Court, and Montana Legal Services to change their forms for both a petition and the economic restraining order instead of just updating the one form for the economic restraining order.

With that, I thank you for your time, and am happy to remain on the line to address any questions you may have.

EXHIBIT 1
DATE 1/25/21
HB 164

Testimony HB 164

Before House Judiciary Committee

January 25, 2021

By Gail H. Goheen

Thank you Chairman Usher and Members of the Judiciary Committee, for allowing me to appear before you today. My name is Gail Goheen (G-O-H-E-E-N), and like Debra Steigerwalt and Mars Scott, I am a member of the Legislative Committee of the Family Law Section of the Montana State Bar. I was part of a group of attorneys in 2018 that studied several statutes from around the country dealing with automatic economic restraining orders, in an effort to recommend changes for improving Montana's law. Since graduating from Tulane Law School and serving as a Federal Law Clerk in Montana, I have been an attorney in Hamilton, Montana for over 40 years. During most of that time I have specialized in the practice of family law, and have represented a wide range of Montanans--from pro bono clients to wealthy folks (probably about equally men and women)—throughout a number of judicial districts in this state.

From my experience as a family law attorney, I know that HB 164 will help sort out many of the problems that arise when parties are divorcing—by making much clearer the rules about what can and cannot be done in the course of such proceedings. In the end that should reduce the amount of time, effort and expense for not only the parties, but also for the Courts. It should also help make the process and the impacts for the parties much more fair and even-handed.

I appreciate that you are busy today, and my goal is not to repeat what Ms. Steigerwalt and Mr. Scott have told you. I do want to mention a couple of examples, however, as to how HB 164 will improve the current law. One of these points has to do with Petitioners (those filing for divorce) as opposed to Respondents (those served with the divorce pleadings in a case). Over the years, I have often seen that the party who plans on filing the divorce does considerable "divorce planning." They all too frequently, scheme to have the arrangements in place that will favor them and limit the resources available to the other party after the action is filed. By way of example, I once had a case where the husband took off on a skiing vacation, arranging for the wife to be "served" with the divorce papers in his absence. Very shortly before doing this, however, he closed the joint credit cards, moved all the money from the joint accounts (placing them solely under his control), and even made arrangements to move the wife's car from the family home so she had no transportation. Then she was "served," and was especially handicapped, as her earnings were comparatively low. Needless to say it's very limiting to move forward in meeting living expenses in such circumstances, much less hire an attorney. Usually such divorce planning unfairly handicaps the other party in moving forward towards a fair resolution.

Under the current law, there are no provisions specifically dealing with such divorce "planning" by Petitioners—other than, of course, following what would likely be costly contested proceedings, a Court can remedy the situation by making funds accessible to the other party, etc.

Under the proposed legislation, there are two provisions which would be helpful in preventing the behavior I referenced. Section 3 of the bill adds a provision requiring a party filing a "Petition" to include in that Petition, a statement acknowledging that "the automatic economic restraining order provided for [in section 1] applies to the petitioner on the filing of the petition with the clerk of the district court" [emphasis supplied]. Section 1 (9) [which the Petitioner would be recognizing as applicable] then makes it clear there can be consequences for the types of unfair divorce "planning" that I've referenced. That subsection reads:

> ...In issuing any temporary orders or in a final decree, the court may consider any action taken by the petitioner within a reasonable time prior to the filing of the petition that would otherwise have constituted a violation of this order had this order been issued at the time.

Thus a Petitioner who effectively acts in a manner like I described in my example (cutting off access to assets, closing joint credit cards etc.) may face not only orders changing the access to assets, etc., but actually punishing such behavior. For example, a Court could order a misbehaving Petitioner to pay the other party's attorney fees and other expenses incurred to rectify the situation (to come out of the Petitioner's eventual share of the marital estate), etc. Such possible consequences should cause parties to approach the dissolution of marriage proceedings more fairly, and limit disputes between the parties and the need for Court involvement.

Another example of a benefit from the proposed legislation is that it would help clarify what the parties can and cannot do relating to estate planning. Under the current statute, this area is very confusing. The new law would distinctly allow parties to create or revise wills, and certainly powers of attorney (who, for example would want a divorce opposing party to make decisions on their behalf if they became incapacitated) [Section 1 (4)], but this bill would still limit actual present transfer of assets without Court approval, including by changing beneficiaries of retirement plans, life insurance policies, etc.

The last example I'd like to mention has to do with destruction of financial and other records—including electronic records, which would be prohibited under the new bill, without Court order or agreement of the other party [Section 1 (3) (i)]. There is no equivalent provision under the current statute. Such referenced record destruction can greatly hamper obtaining evidence with resulting increased expenses in a proceeding. The new prohibition should make discovery and moving through a case run more smoothly.

Thank you for letting me testify today. With that, I'll open myself up for any questions you may have.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Barry Usher, on January 29, 2021 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Barry Usher, Chair (R)
Rep. Amy Regier, Vice Chair (R)
Rep. Seth Berglee (R)
Rep. Laurie Bishop (D)
Rep. Jennifer Carlson (R)
Rep. Robert Farris-Olsen (D)
Rep. Frank Fleming (R)
Rep. Tom France (D)
Rep. Jane Gillette (R)
Rep. Donavon Hawk (D)
Rep. Jedediah Hinkle (R)
Rep. Brandon Ler (R)
Rep. Bob Phalen (R)
Rep. Derek Skees (R)
Rep. Ed Stafman (D)
Rep. Danny Tenenbaum (D)

Members Excused:

Rep. Kathy Kelker, Vice Chair (D)
Rep. Dennis R. Lenz (R)
Rep. Mallerie Stromswold (R)

Members Absent: None

Staff Present:

Lydia Balian, Committee Secretary
Rachel Weiss, Legislative Branch
Hallie Swain, Remote Meeting Coordinator

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	HB 211, 1/25/2021; HB 229, 1/25/2021
Executive Action on:	HB 35; HB 98; HB 116; HB 164; HB 183; HB 194; HB 200; HB 211; HB 215; HB 229; HB 230; HB 234; HB 236; SB 4

HEARING ON HB 211

Opening Statement by Sponsor:
08:09:54 Rep. Gregory Frazer (R), HD 78, opened the hearing on HB 211, Provide compensation and assistance for secondary victims.

Proponents' Testimony:
08:13:20 Beth Brenneman, Disability Rights Montana
08:15:20 Kelsen Young, Montana Coalition Against Domestic and Sexual Violence (MCADSV)
08:17:37 Rep. Stromswold joined the meeting.
08:19:34 Ambrel McKetchnie, Powell County Crime Victim Compensation

Opponents' Testimony: None

Informational Testimony:
08:23:20 Holley Johnson, Attorney General's Office (AG)

Questions from Committee Members and Responses:
08:24:25 Rep. Stafman
08:25:03 Holley Johnson, Powell County Crime Victim Compensation
08:25:44 Chair Usher
08:25:52 Holley Johnson, Powell County Crime Victim Compensation

Closing by Sponsor:
08:26:13 Rep. Frazer

08:26:58 Rep. Fleming left the meeting.

HEARING ON HB 229

Opening Statement by Sponsor:
08:27:21 Rep. Jane Gillette (R), HD 64 , opened the hearing on HB 229, Generally revise insurance laws.
EXHIBIT(juh20a01)

Proponents' Testimony:
08:31:18 Jeff Laszloffy, Montana Family Foundation (MFF)
08:32:37 Matthew Brower, Montana Catholic Conference

Opponents' Testimony:
08:33:56 SJ Howell, Montana Women Vote
08:34:56 Tom Roberts, Blue Mountain Clinic; Montana Reproductive Rights Coalition
08:38:39 Laurel Hesse, Americans Civil Liberties Union of Montana (ACLU)

Informational Testimony:
08:41:20 Jackie Jones, Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI)

Questions from Committee Members and Responses:

08:42:04 Rep. Hawk
08:42:25 Jackie Jones, CSI
08:43:11 Rep. Hawk
08:43:29 Rep. Gillette
08:44:24 Rep. Farris-Olsen
08:46:44 Rep. Gillette
08:47:07 Rep. Stafman
08:50:42 Rep. Gillette
08:51:07 Rep. Lenz joined the meeting
08:51:14 Rep. Skees
08:53:14 Tom Roberts, Blue Mountain Clinic; Montana Reproductive Rights Coalition
08:54:42 Rep. Skees
08:55:06 Laurel Hesse, ACLU
08:55:38 Chair Usher
08:56:07 Rep. Skees
08:56:40 Rep. Farris-Olsen
08:58:14 Rep. Gillette
08:58:50 Rep. Fleming rejoined the meeting.

Closing by Sponsor:

08:58:50 Rep. Gillette

09:02:26 Recess
09:52:48 Reconvened

EXECUTIVE ACTION ON HB 35

09:54:02 **Motion:** Rep. A. Regier moved that **HB 35 DO PASS**.

09:54:20 **Motion:** Rep. Skees moved that **HB 35 BE AMENDED**.
EXHIBIT(juh20a02)

Discussion:

09:56:12 Rep. Farris- Olsen
09:56:24 Rep. Skees
09:57:31 Rep. Carlson
09:58:21 Rep. Gillette
09:58:44 Chair Usher

09:59:27 **Vote:** Motion carried 12-7 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Kelker voted by proxy.

10:01:20 **Motion/Vote:** Rep. A. Regier moved that **HB 35 DO PASS AS AMENDED**. Motion carried unanimously by voice vote. Rep. Kelker voted by proxy.

EXECUTIVE ACTION ON HB 98

10:03:07 **Motion:** Rep. A. Regier moved that **HB 98 DO PASS**.

10:03:45 **Motion:** Rep. Gillette moved that **HB 98 BE AMENDED**.
EXHIBIT(juh20a03)

Discussion:
10:04:20 Rep. Bishop
10:06:07 Rep. Gillette
10:07:07 Rep. Farris-Olsen
10:07:33 Rep. Gillette
10:08:10 Rep. Farris-Olsen

10:08:30 **Vote:** Motion carried 12-7 by roll call vote with Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Skees, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Kelker voted by proxy.

10:09:36 **Motion:** Rep. A. Regier moved that **HB 98 DO PASS AS AMENDED**.

10:09:45 **Motion:** Rep. Gillette moved that **HB 98 BE AMENDED**.
EXHIBIT(juh20a04)

Discussion:
10:10:42 Rep. Farris-Olsen
10:10:53 Rep. Gillette
10:11:24 Rep. Farris-Olsen
10:11:54 Rep. Lenz
10:12:25 Chair Usher

10:13:05 **Vote:** Motion carried 18-1 by roll call vote with Rep. Hawk voting no. Rep. Kelker voted by proxy.

10:14:23 **Motion:** Rep. A. Regier moved that **HB 98 DO PASS AS AMENDED**.

10:14:34 **Motion:** Rep. Farris-Olsen moved that **HB 98 BE AMENDED**.
EXHIBIT(juh20a05)

Discussion:
10:15:09 Rachel Weiss, Legislative Services Division (LSD)
10:16:12 Rep. Skees
10:16:27 Rep. Farris-Olsen
10:16:48 Rep. Lenz
10:17:40 Chair Usher

10:18:25 **Vote:** Motion failed 7-12 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting aye. Rep. Kelker voted by proxy.

10:19:29 **Vote:** Motion carried unanimously by roll call vote. Rep. Kelker voted by proxy.

EXECUTIVE ACTION ON HB 116

10:20:46 **Motion:** Rep. A. Regier moved that **HB 116 DO PASS**.

10:21:01 **Motion/Vote:** Rep. Carlson moved that **HB 116 BE AMENDED**. Motion carried unanimously by voice vote.

EXHIBIT(juh20a06)

10:23:13 **Motion/Vote:** Rep. A. Regier moved that **HB 116 DO PASS AS AMENDED**. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 164

10:25:07 **Motion:** Rep. A. Regier moved that **HB 164 DO PASS**.

10:25:15 **Motion/Vote:** Rep. Berglee moved that **HB 164 BE AMENDED**. Motion carried unanimously by voice vote.

EXHIBIT(juh20a07)

10:26:27 **Motion:** Rep. A. Regier moved that **HB 164 DO PASS AS AMENDED**.

Discussion:
10:26:46 Rep. Gillette

10:28:18 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 183

10:29:07 **Motion:** Rep. A. Regier moved that **HB 183 DO PASS**.

Discussion:
10:29:18 Rep. Tenenbaum
10:29:54 Rep. Farris-Olsen

10:31:01 **Vote:** Motion failed 7-12 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting aye. Rep. Kelker voted by proxy.

10:31:58 **Motion/Vote:** Rep. A. Regier moved that **HB 183 BE TABLED**. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 194

10:32:54 **Motion:** Rep. A. Regier moved that **HB 194 DO PASS**.

Discussion:
10:33:05 Rep. J. Hinkle
10:33:41 Rep. Hawk

10:34:20 **Substitute Motion/Vote:** Rep. Lenz made a substitute motion that **HB 194 BE TABLED**. Substitute Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 200

10:35:13 **Motion:** Rep. A. Regier moved that **HB 200 DO PASS**.

Discussion:
10:35:30 Rep. Stafman
10:39:58 Chair Usher
10:40:41 Rep. Carlson
10:42:03 Rep. Skees

10:43:38 **Vote:** Motion carried 12-7 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Kelker voted by proxy.

EXECUTIVE ACTION ON HB 211

10:45:01 **Motion/Vote:** Rep. A. Regier moved that **HB 211 DO PASS**. Motion carried unanimously by voice vote. Rep. Kelker voted by proxy.

EXECUTIVE ACTION ON HB 215

10:45:49 **Motion:** Rep. A. Regier moved that **HB 215 DO PASS**.

Discussion:
10:45:59 Rep. Hawk
10:46:08 Rep. Bishop

10:46:29 **Vote:** Motion carried 15-4 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. Kelker and Rep. Stafman voting no. Rep. Kelker voted by proxy.

EXECUTIVE ACTION ON HB 229

10:47:53 **Motion:** Rep. A. Regier moved that **HB 229 DO PASS**.

Discussion:
10:48:04 Rep. Farris-Olsen
10:49:08 Rep. Skees
10:49:16 Rep. J. Hinkle
10:49:39 Rep. Carlson
10:49:57 Rep. Berglee

10:50:22 **Vote:** Motion carried 12-7 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Kelker voted by proxy.

EXECUTIVE ACTION ON HB 230

10:51:57 **Motion:** Rep. A. Regier moved that **HB 230 DO PASS**.

Discussion:
10:52:12 Rep. France
10:55:58 Rep. Stafman
10:58:11 Rep. Skees
11:00:38 Rep. J. Hinkle

11:01:46 **Vote:** Motion carried 12-7 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Kelker voted by proxy.

EXECUTIVE ACTION ON HB 234

11:03:30 **Motion:** Rep. A. Regier moved that **HB 234 DO PASS**.

Discussion:
11:03:39 Rep. Hawk

11:03:58 **Motion/Vote:** Rep. Stromswold moved that **HB 234 BE AMENDED**. Motion carried unanimously by voice vote. Rep. Kelker voted by proxy.
EXHIBIT(juh20a08)

11:04:48 **Motion/Vote:** Rep. A. Regier moved that **HB 234 DO PASS AS AMENDED**. Motion carried unanimously by voice vote. Rep. Kelker voted by proxy.

EXECUTIVE ACTION ON HB 236

11:05:57 Rachel Weiss, LSD

11:06:07 **Motion:** Rep. A. Regier moved that **HB 236 DO PASS**.

Discussion:
11:06:19 Rep. Tenenbaum
11:07:32 Rep. Bishop
11:08:36 Rep. Stafman
11:09:59 Rep. Carlson
11:12:40 Rep. J. Hinkle
11:13:28 Rep. France
11:15:05 Rep. Gillette
11:16:21 Chair Usher

11:16:58 **Vote:** Motion carried 12-7 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Kelker voted by proxy.

EXECUTIVE ACTION ON SB 4

11:18:13 **Motion/Vote:** Rep. A. Regier moved that **SB 4 BE CONCURRED IN**. Motion carried unanimously by voice vote. Rep. Kelker voted by proxy. Rep. Lenz will carry the bill.

11:19:24 Chair Usher
11:19:40 Rep. Skees
11:20:12 Chair Usher
11:21:01 Rep. Skees
11:22:23 Rep. Carlson
11:23:06 Chair Usher

ADJOURNMENT

Adjournment: 11:23:32

_____
Lydia Balian, Secretary

lb

Additional Documents:

EXHIBIT(juh20aad.pdf)

EXHIBIT 7
DATE 1/29/21
HB 164

Amendments to House Bill No. 164
1st Reading Copy

Requested by Connie Keogh
For the (H) Judiciary

Prepared by Alexis Sandru
01/25/2021, 02:36:03

1. Page 3, line 12.
Following: the first "mail"
Insert: ", e-mail, or other electronic communications"
Following: the second "mail"
Insert: ", e-mail, or other electronic communications"

2. Page 3, line 13.
Strike: "file"
Insert: "submit"

3. Page 3, line 13.
Strike: "mailing"
Insert: "mail, e-mail, or other electronic"

- END -

Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.

Montana State Legislature

2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Any other type of documents such as:**
  - **@ Petitions {if any} Emails, all documents given to Committee Secretary after meeting.**

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION

HOUSE JUDICIARY COMMITTEE

Date: Friday, January 29, 2021
Place: Capitol

Time: 8:00 AM
Room: 137

BILLS and RESOLUTIONS HEARD:

HB 211 - Provide compensation and assistance for secondary victims - Rep. Gregory Frazer (R)
HB 229 - Generally revise insurance laws - Rep. Jane Gillette (R)

EXECUTIVE ACTION TAKEN:

HB 35 - Do Pass as Amended
HB 98 - Do Pass as Amended
HB 116 - Do Pass as Amended
HB 164 - Do Pass as Amended
HB 183 - Be Tabled
HB 194 - Be Tabled
HB 200 - Do Pass
HB 211 - Do Pass
HB 215 - Do Pass
HB 229 - Do Pass
HB 230 - Do Pass
HB 234 - Do Pass as Amended
HB 236 - Do Pass
SB 4 - Be Concurred In

Comments:

REP. Barry Usher, Chair

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE: 1/29/21

NAME	PRESENT	ABSENT/EXCUSED
REP. USHER, CHAIR	✓	
REP. AMY REGIER, VICE CHAIR	✓	
REP. KELKER, VICE CHAIR		✓
REP. BERGLEE	✓	
REP. BISHOP	✓	
REP. CARLSON	✓	
REP. FARRIS-OLSEN	✓	
REP. FLEMING	✓	
REP. FRANCE	✓	
REP. GILLETTE	✓	
REP. HAWK	✓	
REP. JEDEDIAH HINKLE	✓	
REP. LENZ		✓
REP. LER	✓	
REP. PHALEN	✓	
REP. SKEES	✓	
REP. STAFMAN	✓	
REP. STROMSWOLD		✓
REP. TENENBAUM	✓	

19 MEMBERS

COMMITTEE FILE COPY

BILL TABLED NOTICE

HOUSE JUDICIARY COMMITTEE

The **HOUSE JUDICIARY COMMITTEE** TABLED

HB 183 - Eliminate requirement that offenders pay public defender fees - Rep. Danny Tenenbaum (D)
HB 194 - Generally revise vehicle liability insurance parameters - Rep. Fred Anderson (R)

by motion, on **Friday, January 29, 2021** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

Lydia Balian
(For the Committee)

(For the Chief Clerk of the House)

11:45AM / 1/29
(Time) (Date)

January 29, 2021 (11:36am) Lydia Balian, Secretary Phone: 444-4872

HOUSE STANDING COMMITTEE REPORT

January 29, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 200** (first reading copy -- white) **do pass**.

Signed: _____
Representative Barry Usher, Chair

- END -

Committee Vote:
Yes 12, No 7
Fiscal Note Required __

HB0200001SC.hlc

1.29.21
JR 1:24pm

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 211** (first reading copy -- white) **do pass.**

Signed: _____
Representative Barry Usher, Chair

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

HB0211001SC.hlc

1.29.21
JR 1:48pm

HOUSE STANDING COMMITTEE REPORT

January 29, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 215** (first reading copy -- white) **do pass**.

Signed: _____
Representative Barry Usher, Chair

- END -

Committee Vote:
Yes 15, No 4
Fiscal Note Required __

HB0215001SC.hlc

1.29.21
JR 1:25pm

HOUSE STANDING COMMITTEE REPORT

January 29, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 229** (first reading copy -- white) **do pass**.

Signed: _____
Representative Barry Usher, Chair

- END -

Committee Vote:
Yes 12, No 7
Fiscal Note Required __

HB0229001SC.hlc

1.29.21
JR 1:24pm

HOUSE STANDING COMMITTEE REPORT

January 29, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 230** (first reading copy -- white) **do pass**.

Signed: _____
Representative Barry Usher, Chair

- END -

Committee Vote:
Yes 12, No 7
Fiscal Note Required __

HB0230001SC.hlc

1.29.21
JR 1:26pm

HOUSE STANDING COMMITTEE REPORT

January 29, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 236** (first reading copy -- white) **do pass.**

Signed: _____
Representative Barry Usher, Chair

- END -

Committee Vote:
Yes 12, No 7
Fiscal Note Required __

HB0236002SC.hlc

1.29.21
JR 1:31pm

HOUSE STANDING COMMITTEE REPORT

January 29, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 4** (second house second reading copy -- tan) **be concurred in**.

Signed: _____
Representative Barry Usher, Chair

To be carried by Representative Dennis Lenz

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

SB0004001SC15249.hlc

1.29.21
JR 1:33PM

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 35** (first reading copy -- white) **do pass as amended**.

Signed: _____
Representative Barry Usher, Chair

And, that such amendments read:

1. Title, line 8.
Following: "DATE"
Insert: "AND A TERMINATION DATE"

2. Page 3.
Following: line 17
Insert: "NEW SECTION. **Section 6. Termination.** [This act] terminates June 30, 2023."

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

HB0035001SC.hlc

1:29.21
SR 1:21 PM

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 116** (first reading copy -- white) **do pass as amended**.

Signed: _____
Representative Barry Usher, Chair

And, that such amendments read:

1. Title, line 6.
Following: "PROPERTY";"
Insert: "REVISING WHEN AN OWNER OR OWNER'S AGENT IS IMMUNE FROM CERTAIN ACTIONS;"

2. Page 3, line 10 through line 11.
Strike: subsection (5) in its entirety

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

HB0116002SC.hlc

1.29.21
SR 1:49pm

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 234** (first reading copy -- white) **do pass as amended.**

Signed: _____
Representative Barry Usher, Chair

And, that such amendments read:

1. Title, line 5.
Following: "LICENSE;"
Insert: "REVISING THE OFFICIALS WHO MAY DETERMINE COMPLIANCE;"

2. Page 1.
Following: line 9
Insert: "**Section 1.** Section 37-33-406, MCA, is amended to read:

"**37-33-406. ~~(Temporary)~~Massage therapy businesses -- requirements.** (1) A massage therapy business shall conspicuously display on the premises the license of each massage therapist working at the business or, for a mobile practice, make the license readily available.

(2) (a) The department or a ~~local~~ designee, a ~~local~~ government official having jurisdiction, or a ~~local~~ law enforcement officer may enter a massage therapy business at any time during business hours to determine compliance with subsection (1).

(b) The action taken under subsection (2)(a) may not interrupt a treatment session that is in progress, except that a treatment session lasting 2 hours or more may be interrupted.~~(Terminates June 30, 2023--sec. 6, Ch. 419, L. 2019.)~~""

Renumber: subsequent sections

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

HB0234001SC.hlc

1.29.21
SR 1:27pm

HOUSE STANDING COMMITTEE REPORT

January 29, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 164** (first reading copy -- white) **do pass as amended.**

Signed: _____
Representative Barry Usher, Chair

And, that such amendments read:

1. Page 3, line 12.
Following: the first "mail"
Insert: ", e-mail, or other electronic communications"
Following: the second "mail"
Insert: ", e-mail, or other electronic communications"

2. Page 3, line 13.
Strike: "file"
Insert: "submit"

3. Page 3, line 13.
Strike: "mailing"
Insert: "mail, e-mail, or other electronic"

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

HB0164001SC.hlc

2.1.21
JR 11:22AM

HOUSE STANDING COMMITTEE REPORT

January 29, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 98** (first reading copy -- white) **do pass as amended.**

Signed: _____
Representative Barry Usher, Chair

And, that such amendments read:

1. Title, line 6.
Following: "ADMINISTERS;"
Insert: "CLARIFYING INFORMATION THAT THE TASK FORCE MUST REPORT;"

2. Page 1, line 25.
Following: "44-2-412;"
Strike: "and"

3. Page 2, line 1.
Following: "persons"
Insert: "; and
(c) work to identify causes that contribute to missing and murdered indigenous persons and make recommendations to federally recognized tribes in the state to reduce cases of missing and murdered indigenous persons"

4. Page 2, line 14.
Following: "~~written~~"
Insert: "written"

5. Page 2, line 16.
Following: "~~existence.~~"
Insert: "The report must include the following information:
(a) the number of unique individuals reported to the missing and murdered indigenous persons database;
(b) the number of unique individuals recovered as a result of the missing and murdered indigenous persons database;
(c) the number of unique individuals recovered as a result of the looping in native communities network grant program;
(d) the number of unique individuals searched for and recovered as a result of missing persons response teams;
(e) the number of missing persons entries into the missing and murdered indigenous persons database by year;

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

HB0098001SC.hlc

2/1/21
JR 9:55AM

(f) an analysis by year of the characteristics of missing indigenous persons, including but not limited to age, gender, child protective services involvement status, foster case status, duration of time missing, and estimated related cause;
(g) the number of actively missing indigenous persons by year;
(h) a description and the results of any noncompetitive grant awardee activities;
(i) a description of the activities and progress related to improving interagency
communication, cooperation, and collaboration and removing interjurisdictional barriers; and
(j) any other information the task force members find relevant to the task force's mission."

- END -

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 35 DATE 1/29/21

MOTION Do Pass Amendment HB35.1.1

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	✓
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 98 DATE 1/29/21

MOTION Do Pass Amendment HB98.1.3

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	✓
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 98 DATE 1/29/21

MOTION Do Pass Amendment HB98.1.4

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR	✓		✓
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN	✓		
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM	✓		
REP. BISHOP	✓		
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		
REP. FARRIS-OLSEN	✓		
REP. FRANCE	✓		
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 98 DATE 1/29/21

MOTION Do Pass Amendment HB98.1.2

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR		✓	
REP. KELKER, VICE CHAIR	✓		✓
REP. CARLSON		✓	
REP. STROMSWOLD		✓	
REP. BERGLEE		✓	
REP. PHALEN		✓	
REP. FLEMING		✓	
REP. STAFMAN	✓		
REP. LENZ		✓	
REP. GILLETTE		✓	
REP. LER		✓	
REP. TENENBAUM	✓		
REP. BISHOP	✓		
REP. J. HINKLE		✓	
REP. HAWK	✓		
REP. SKEES		✓	
REP. FARRIS-OLSEN	✓		
REP. FRANCE	✓		
REP. USHER, CHAIR		✓	

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 98 DATE 1/29/21

MOTION Do Pass as Amended

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR	✓		✓
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN	✓		
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM	✓		
REP. BISHOP	✓		
REP. J. HINKLE	✓		
REP. HAWK	✓		
REP. SKEES	✓		
REP. FARRIS-OLSEN	✓		
REP. FRANCE	✓		
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 183 DATE 1/29/21

MOTION Do Pass

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR		✓	
REP. KELKER, VICE CHAIR	✓		✓
REP. CARLSON		✓	
REP. STROMSWOLD		✓	
REP. BERGLEE		✓	
REP. PHALEN		✓	
REP. FLEMING		✓	
REP. STAFMAN	✓		
REP. LENZ		✓	
REP. GILLETTE		✓	
REP. LER		✓	
REP. TENENBAUM	✓		
REP. BISHOP	✓		
REP. J. HINKLE		✓	
REP. HAWK	✓		
REP. SKEES		✓	
REP. FARRIS-OLSEN	✓		
REP. FRANCE	✓		
REP. USHER, CHAIR		✓	

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 200 DATE 1/29/21

MOTION Do Pass

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	✓
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 215 DATE 1/29/21

MOTION Do Pass

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	✓
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM	✓		
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK	✓		
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	
REP. FRANCE	✓		
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 229 DATE 1/29/21

MOTION Do Pass

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	✓
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 230 DATE 1/29/21

MOTION Do Pass

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	✓
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 236 DATE 1/29/21

MOTION Do Pass

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	✓
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Laurie Bishop.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
HB 35	Do Pass, as amended	X	
HB 35	Amendment, HB0035.001.001		X
HB 98	Do Pass, as amended	X	
HB 98	Amendment, HB0098.001.002	X	
HB 98	Amendment, HB0098.001.003		X
HB 98	Amendment, HB0035.001.004	X	
HB 116	Do Pass, as amended	X	
HB 116	Amendment, HB0116.001.001	X	
HB 164	Do Pass, as amended	X	
HB 164	Amendment, HB0164.001.001	X	
HB 183	Do Pass	X	
HB 183	Table	X	

BILL	MOTION (Include AMENDMENT #)	AYE	NO
HB 194	Table	X	
HB 200	Do Pass		X
HB 211	Do Pass	X	
HB 215	Do Pass		X
HB 229	Do Pass		X
HB 230	Do Pass		X
HB 234	Do Pass	X	
HB 236	Do Pass		X
SB 4	Do Concur	X	

I authorize my vote to be matched with that of Rep. Laurie Bishop for any amendments proposed on this date.

Rep. Katharine A. Kelker (Signature) Rep. Kathy Kelker (Print Name) (Meeting Date)

Rep. Kelker

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Wednesday, January 27, 2021 5:07 PM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-211: Provide compensation and assistance for secondary victims 2021-01-29 08:00 AM - (H) Judiciary Successfully Submitted on 01-27-21 17:06

Details:
Bill: HB-211: Provide compensation and assistance for secondary victims 2021-01-29 08:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Crime Victim Compensation
Name: Holley Johnson
Email: hjohnson@mt.gov
Phone: (406) 444-5613
City, State: Helena, MT
Written Statement: Good morning,
My name is Holley Johnson, I am the Team Lead for the Crime Victim Compensation Program. I am here today as a proponent for HB211. Expanding the secondary benefits CVC offers to crime victims has been on our radar for many years, our team is grateful that this legislation has been created and we fully support HB211. I am available to answer any questions you may have pertaining to Crime Victim Compensation. Thank you, Holley
Files:
Testify via Zoom: Yes
Zoom Method: Computer

WITNESS STATEMENT

January 29, 2021

To: Montana House Judiciary Committee

From: Matthew Brower, Executive Director of the Montana Catholic Conference

Re: Testimony in support of HB 229

Mr. Chairman and members of the committee, my name is Matt Brower and I currently serve as the Executive Director of the Montana Catholic Conference. I speak on behalf of the two Roman Catholic bishops of Montana.

I am here today to voice our support for House Bill 229.

The Montana Catholic Conference is strongly opposed to the inclusion of abortion coverage in insurance plans, particularly those that are government-funded or subsidized because it forces taxpayers to contribute to ending the lives of unborn children. This bill helps protect the conscience of individuals who do not wish to contribute insurance premiums to fund abortion and we believe that HB 229 is a great step toward reducing the unintentional subsidizing of abortion coverage.

Mr. Chairman and members of the committee, on behalf of the Montana Catholic Conference, I urge a "do pass" and thank you for your time.

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Thursday, January 28, 2021 7:15 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-229: Generally revise insurance laws 2021-01-29 08:00 AM - (H) Judiciary Successfully Submitted on 01-28-21 07:15

Details:
Bill: HB-229: Generally revise insurance laws 2021-01-29 08:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Barbara Williamson
Email: bbwmson@gmail.com
Phone: (701) 201-0456
City, State: Townsend, MT
Written Statement: Mr. Chairman and Members of the Committee:

I believe in the fundamental dignity of all human beings and sanctity of life from conception to natural death. As abortion kills an unborn baby, I do not want to pay for an abortion when I pay my State of Montana taxes.

I ask that you support HB 129 that will prohibit coverage of abortion services in qualified health plans.

As a Montana citizen who pays taxes each year to the State of Montana, as well as, the Federal Government, I urge a " do pay " on HB 229.

Thank you for your time and consideration.
Barbara Williamson
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Thursday, January 28, 2021 11:41 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-229: Generally revise insurance laws 2021-01-29 08:00 AM - (H) Judiciary Successfully Submitted on 01-28-21 11:41

Details:
Bill: HB-229: Generally revise insurance laws 2021-01-29 08:00 AM - (H) Judiciary
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Iko'tsimiskimaki Beck
Email: red.shell.womxn@gmail.com
Phone: (406) 274-3651
City, State: Missoula
Written Statement: I do not believe that government has any business interfering with peoples personal health decisions.
Files:
Testify via Zoom: No
Zoom Method: N/A

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, January 29, 2021
HB 229 - Generally revise insurance laws
Sponsor: **Rep. Jane Gillette (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Laurel Hesse	ACLU of MT		X	
Tom Roberts	MT Reproductive Rights		X	
Jackie Jones	CSI			X

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, January 29, 2021
HB 211 - Provide compensation and assistance for secondary victims
Sponsor: **Rep. Gregory Frazer (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Beth Brennen	Disability Rights MT	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

House Judiciary Zoom Testimony 01.29.2021

Bill	Name	Location	Email	Position	Affiliation
HB-211	**Proponents**				
HB-211	Kelsen Young	Helena, Montana	kyoung@mcadsv.com	Proponent	MT Coalition Against Domestic & Sexual Violence
HB-211	Beth Brenneman	Helena, Montana	beth@disabilityrightsmt.org	Proponent	Disability Rights Montana
	Informational Witness				
HB-211	Holley Johnson	Helena, Montana	hjohnson@mt.gov	Proponent	Crime Victim Compensation
HB-229	**Proponents**				
HB-229	Matthew Brower	Helena, Montana	mbrower@provide.net	Proponent	MT Catholic Conference
HB-229	Jeff Laszloffy	Laurel, Montana	jeff@montanafamily.org	Proponent	MT Family Foundation
	Opponent				
HB-229	SJ Howell	Missoula, Montana	howell@montanawomenvote.org	Opponent	Montana Women Vote

ADDITIONAL DOCUMENTS

Legal Review Note Process

What Is a Legal Review Note?

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills." The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review IS NOT dispositive of the issue of constitutional conformity, and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See Alexander v. Bozeman Motors, Inc., 356 Mont. 439, 234 P.3d 880 (2010); Eklund v. Wheatland County, 351 Mont. 370, 212 P.3d 297 (2009); St. v. Pyette, 337 Mont. 265, 159 P.3d 232 (2007); and Elliott v. Dept. of Revenue, 334 Mont. 195, 146 P.3d 741 (2006).

Joint Rule 10-130(6):

10-130. Bills -- sponsorship -- style -- format.
(6) A legal review note or analysis produced by the Legislative Services Division Legal Services Office may not be attached to an introduced bill or posted on the Legislative Branch website unless requested by the sponsor of the bill.

Steps in the Legal Review Note Process

1. The Legislator requests a bill draft.

2. The bill drafter contacts the Legislator (bill draft requester) for direction and information regarding the bill draft.

3. Based on the direction and information provided, the bill drafter drafts the bill.

4. The bill drafter sends a draft copy of the bill to the requester for the requester's review. If known to the bill drafter, and after consultation with the legal director, the bill drafter will verbally note potential legal concerns and communicate those concerns to the requester.

5. If, after receipt of the bill draft, the requester directs the bill drafter to proceed with sending the bill draft to legal review, the bill drafter will complete the bill drafter checklist, including checking the "conformity with state and federal constitutions considered" box, and move the bill draft to legal review in the bill draft editor system (BDE).

6. Pursuant to section 5-11-112, MCA, the Legal Services Office reviews the bill draft for constitutional conformity and statutory conflicts. If, in consultation with the applicable subject matter attorney, the legal director determines that there may be constitutional conformity issues, the legal director will communicate those issues to the bill drafter and then initiate the preliminary legal review note process. The bill drafter will communicate those issues to the requester and offer potential options regarding drafting around those issues. The bill drafter will notify the legal director as to whether the issues have been resolved and whether the requestor wants the bill draft to proceed through the drafting process.

7. If the constitutional conformity issues still exist, the legal director will draft the preliminary legal review note or work with the applicable subject matter attorney to draft the preliminary legal review note.

8. Edit staff reviews the preliminary legal review note and then electronically returns the note to the legal director for review and acceptance of the edit corrections.

9. The legal director provides an electronic copy of the preliminary legal review note to the bill drafter. The bill drafter will then provide an electronic copy of the preliminary legal review note to the bill draft requester. The bill drafter will communicate to the requester that the requester can choose to attach a response to the preliminary legal review note. The bill draft requester has two days to provide a response to the preliminary legal review note. This does not preclude the bill draft requester from responding to a legal review note later in the legislative process, once the bill is introduced.

10. The bill draft requester can direct the bill drafter to redo the bill draft in order to eliminate the constitutional conformity issues identified in the preliminary legal review note, if possible. If the constitutional conformity issues are eliminated from the bill draft, then the legal director will classify the legal review note issues as being "resolved" in the bill draft notes section of BDE system and will uncheck the legal review note tab in the BDE.

11. The bill draft requester can direct the bill drafter to send the bill draft through the bill draft production process without any changes. The legal director will upload the preliminary legal review note and any bill draft requester response to the junque tab in the BDE.

12. The executive director directs input staff to attach a physical note and an electronic note to the bill draft that is ready for introduction, indicating the presence of a preliminary legal review note and any bill draft requester comments.

13. If a bill draft is introduced and includes a legal review note and any bill draft requester comments, the legal director will ask the sponsor if they want the legal review note and any comments posted on the LAWS bill action Internet page. The legal director will clarify to the sponsor that, regardless of whether or not the legal review note is posted on the website, the legal review note is a public record that can be requested at any time.

    If the sponsor says "yes" to posting the legal review note, the legal director will place an electronic copy of the legal review note and any bill draft requester comments in an assigned directory for posting on the LAWS bill action Internet page. IT staff will post the note on the LAWS bill action Internet page next to the fiscal note link. The legal director will also post the legal review note and any requestor/sponsor comments in the S:\2021 Session Legal Review Notes directory.

    If the sponsor responds in the negative regarding posting the legal review note to the LAWS bill action internet page, the legal director will post the legal review note and any requestor/sponsor comments in the S:\2021 Session Legal Review Notes directory.

14. Committee staff should periodically look in the S:\2021 Session Legal Review Notes directory for the presence of a legal review note attached to a bill that is to be heard in committee.

15. The committee staffer should inform the session standing committee at its organizational meeting of the existing Joint Rule on legal review notes and ask whether the committee wants to be informed of any legal review note on a bill that is being heard in committee.

MINUTES

MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Keith Regier, on February 23, 2021 at 8:00 A.M., in Room 303 Capitol

ROLL CALL

Members Present in the Committee Room:

Sen. Keith Regier, Chair (R)
Sen. Tom McGillvray, Vice Chair (R)
Sen. Bryce Bennett (D)
Sen. Bob Brown (R)
Sen. John Esp (R)
Sen. Chris Friedel (R)
Sen. Jen Gross (D)
Sen. Steve Hinebauch (R)
Sen. Theresa Manzella (R)

Members Present by Zoom Video Conference:

Sen. Diane Sands, Vice Chair (D)
Sen. Susan Webber (D)

Members Excused: None

Members Absent: None

Staff Present: Julianne Burkhardt, Legislative Branch
Heather Vande-Sante, Remote Meeting Coordinator
Jacelyn Sterling, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	HB 164, 2/18/2021; SB 241, 2/18/2021; SB 252, 2/18/2021; SB 282, 2/18/2021
Executive Action:	HB 215 Be Concurred In; SJ 8 Do Pass; SB 194 Do Pass; SB 220 Do Pass as Amended; SB 240 Do Pass; SB 242 Do Pass as Amended

EXECUTIVE ACTION ON SB 220

08:01:29 **Motion:** Sen. McGillvray moved that **SB 220 DO PASS**.

Discussion:
08:01:37 Chair Regier
08:02:25 Sen. Sands
08:02:28 Chair Regier

08:03:18 Sen Friedel entered the meeting.

08:03:23 **Motion:** Sen. McGillvray moved that **SB 220 BE AMENDED**.
EXHIBIT(jus38a01)

Discussion:
08:03:38 Chair Regier

08:04:17 **Vote:** Motion carried unanimously by voice vote.

08:04:26 **Motion/Vote:** Sen. McGillvray moved that **SB 220 DO PASS AS AMENDED**. Motion carried 7-4 by roll call vote with Sen. Bennett, Sen. Gross, Sen. Sands and Sen. Webber voting no.

EXECUTIVE ACTION ON SB 194

08:05:41 **Motion:** Sen. McGillvray moved that **SB 194 DO PASS**.

Discussion:
08:05:48 Chair Regier
08:06:26 Julianne Burkhardt, Legislative Services Division (LSD)
08:06:45 Sen. Friedel
08:07:03 Ms. Burkhardt, LSD
08:07:11 Sen. Friedel
08:07:20 Chair Regier
08:07:27 Sen. Friedel

08:07:53 **Vote:** Motion carried 6-5 by roll call vote with Sen. Bennett, Sen. Friedel, Sen. Gross, Sen. Sands and Sen. Webber voting no.

EXECUTIVE ACTION ON SB 240

08:08:35 Chair Regier

08:08:46 **Motion:** Sen. Manzella moved that **SB 240 DO PASS**.

Discussion:
08:09:35 Chair Regier
08:09:43 Sen. Gross
08:11:13 Sen. Sands
08:12:46 Chair Regier

08:13:15 Sen. Brown
08:14:00 Sen. Gross

08:14:52 **Vote:** Motion carried 7-4 by roll call vote with Sen. Bennett, Sen. Gross, Sen. Sands and Sen. Webber voting no.

EXECUTIVE ACTION ON SB 242

08:15:32 Chair Regier

08:15:38 **Motion:** Sen. Bennett moved that **SB 242 DO PASS**.

08:16:22 **Motion/Vote:** Sen. Bennett moved that **SB 242 BE AMENDED**. Motion carried unanimously by voice vote.

EXHIBIT(jus38a02)

08:18:17 **Motion:** Sen. Bennett moved that **SB 242 DO PASS AS AMENDED**.

Discussion:
08:19:33 Sen. Manzella
08:20:01 Chair Regier
08:20:14 Sen. Bennett
08:20:51 Sen. Brown
08:22:21 Sen. McGillvray
08:23:08 Sen. Friedel

08:23:37 **Vote:** Motion carried 8-3 by roll call vote with Sen. Brown, Sen. Hinebauch and Sen. K. Regier voting no.

EXECUTIVE ACTION ON SJ 8

08:24:25 **Motion/Vote:** Sen. McGillvray moved that **SJ 8 DO PASS**. Motion carried 7-4 by roll call vote with Sen. Bennett, Sen. Gross, Sen. Sands and Sen. Webber voting no.

EXECUTIVE ACTION ON HB 215

08:25:39 **Motion:** Sen. McGillvray moved that **HB 215 BE CONCURRED IN**.

Discussion:
08:26:03 Sen. Brown
08:26:42 Sen. Sands

08:27:44 **Vote:** Motion carried 8-3 by roll call vote with Sen. Gross, Sen. Sands and Sen. Webber voting no. Sen. Regier will carry the bill.

EXECUTIVE ACTION ON HB 200

08:28:51 **Motion:** Sen. McGillvray moved that **HB 200 BE CONCURRED IN**.

Discussion:
08:28:58 Chair Regier
08:29:12 Sen. Esp
08:29:33 Chair Regier

08:29:38 Without objection, Sen. McGillvray withdrew the BE CONCURRED IN motion.

08:29:49 Chair Regier

08:30:33 Recess
09:00:38 Reconvened

HEARING ON SB 241

Opening Statement by Sponsor:
09:01:02 Sen. JP Pomnichowski (D), SD 33, opened the hearing on SB241, Requiring the refund of residential lease application fees.

Proponents' Testimony:
09:08:09 Katjana Stutzer, Montana Public Interest Research Group
09:10:34 Rachel Schmidt, Associated Students of Montana State University (ASMSU)
09:11:57 Allison Reinhardt, Montana Associated Students (MAS)
09:13:14 Jack Rinck, Associated Students of the University of Montana (ASUM)
09:15:07 Shyla Patera, North Central Independent Living Services
EXHIBIT(jus38a03)

09:17:38 Sue Ellerman, Poverello Center Inc.
EXHIBIT(jus38a04)

09:20:50 Rob Gregoire, Bozeman
EXHIBIT(jus38a05)

09:23:58 Jeff Boyle, Bozeman
EXHIBIT(jus38a06)

09:28:24 Kelsen Young, Montana Coalition Against Domestic and Sexual Violence

Additional Testimony Received:
EXHIBIT(jus38a07)

Opponents' Testimony:
09:30:16 John Sinrud, Montana Landlords Association (MLA)
09:36:50 P.J. McHugh, citizen

Additional Testimony Received:
EXHIBIT(jus38a08)

Informational Testimony: None

Questions from Committee Members and Responses:
09:39:00 Sen. Manzella
09:39:40 Mr. Sinrud, MLA
09:40:52 Sen. Manzella
09:41:09 Mr. Sinrud
09:42:41 Sen. Sands
09:43:04 Sen. Pomnichowski
09:43:45 Sen. Sands
09:47:00 Ms. Ellerman, Poverello Center
09:49:04 Sen. Sands
09:49:09 Sen. Hinebauch
09:51:03 Ms. Schmidt, ASMSU
09:51:23 Sen. Webber
09:54:41 Mr. Sinrud
09:55:44 Sen. Bennett
09:56:10 Sen. Pomnichowski
09:58:41 Sen. Fridel
09:59:08 Sen. Pomnichowski
10:00:15 Sen. Friedel
10:00:23 Mr. Sinrud

10:01:12 Jacelyn Sterling, committee secretary

10:01:29 Recess
10:12:43 Reconvened

Closing by Sponsor:
10:12:56 Sen. Pomnichowski

HEARING ON SB 252

Opening Statement by Sponsor:
10:18:05 Sen. David Howard (R), SD 29, opened the hearing on SB252, Generally revise laws related to judicial review.
EXHIBIT(jus38a09)

Proponents' Testimony:
10:21:42 Bart Crabtree, president, State Council on Judicial Accountability
10:22:10 Anna Shehemelinin, citizen

Opponents' Testimony:
10:23:13 Bruce Spencer, State Bar of Montana
10:30:50 Brian Thompson, Montana County Attorneys' Association (MCAA)

Informational Testimony: None

Questions from Committee Members and Responses:
10:32:51 Sen. Friedel
10:34:08 Mr. Spencer, State Bar
10:35:05 Sen. Friedel

10:35:21 Mr. Spencer
10:36:03 Sen. McGillvray
10:36:41 Mr. Spencer
10:37:54 Sen. Sands
10:38:44 Mr. Spencer

Closing by Sponsor:
10:40:12 Sen. Howard

HEARING ON HB 164

Opening Statement by Sponsor:
10:43:31 Rep. Connie Keogh (D), HD 91, opened the hearing on HB164, Revise temporary automatic domestic relations orders.

Proponents' Testimony:
10:46:06 Debra Steigerwalt, Missoula
EXHIBIT(jus38a10)

10:53:09 Mars Scott, Family Law Section, Montana State Bar
EXHIBIT(jus38a11)

10:56:15 Gail Goheen, Family Law Section, Montana State Bar
EXHIBIT(jus38a12)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
11:01:42 Sen. Bennett
11:02:18 Mr. Scott, State Bar
11:03:02 Sen. McGillvray
11:03:43 Ms. Steigerwalt, citizen
11:04:21 Sen. McGillvray
11:04:26 Ms. Steigerwalt
11:05:42 Sen. Sands
11:06:13 Ms. Steigerwalt
11:08:10 Sen. Sands
11:08:44 Ms. Goheen, State Bar

Closing by Sponsor:
11:11:39 Rep. Keogh

HEARING ON SB 282

Opening Statement by Sponsor:
11:13:31 Sen. Theresa Manzella (R), SD 44, opened the hearing on SB282, Assert right of parent to direct child healthcare.

Proponents' Testimony:
11:16:27 Amanda Gallagher, Great Falls
11:17:58 Wade McAlpine, Great Falls
11:18:40 Heather Richards, Belgrade
11:20:02 Charlotte Sanborn, citizen
11:21:43 Therese Frank, citizen
11:24:26 Holly Russell, citizen
11:25:17 Anna Shehemelinin, citizen
11:26:59 Brooke Carlson, Fort Benton
11:28:24 Maria Wyrock, Montanans for Vaccine Choice; Montanans for Health and Parental Rights
11:29:18 Jessica Kirkendall, Flathead Valley
11:31:24 Cathy Eakin, citizen
11:32:05 Denise Johnson, Montana Child Protection Alliance (MCPA)
11:35:23 Garett Bacon, East Helena
11:36:11 Jami Kidd, Hamilton
11:38:18 Donna Elford, Helena
11:42:32 Lanae Higgins, citizen
11:44:51 Jessica Fruitman, Lake County

Opponents' Testimony:
11:45:55 Aimee Grmoljez, Billings Clinic; also speaking on behalf of Frank Cote, Catholic Hospitals
11:48:47 Elizabeth Beil, M.D., Montana Chapter American Academy of Pediatrics
EXHIBIT(jus38a13)

Additional Proponents' Testimony:
11:52:18 Rebecca Schwartz, Whitefish

Additional Opponents' Testimony:
11:54:05 Lane McGill, Powderville
11:56:17 Kiely Keane, Montana Medical Association
12:00:26 Stacey Anderson, Montana Primary Care Association
EXHIBIT(jus38a14)

12:01:47 Ann Truesdell, National Association of Social Workers, Montana
12:05:58 Megan Bailey, Missoula
EXHIBIT(jus38a15)

12:09:54 Kelsen Young, Montana Coalition Against Domestic and Sexual Violence (MCADSV), also speaking for Beth Brenneman, Disabilities Rights Montana

Additional Testimony Received:
EXHIBIT(jus38a16)

Informational Testimony:
EXHIBIT(jus38a17)

Questions from Committee Members and Responses:
12:15:04 Sen. Friedel

12:16:31 Ms. Young, MCADSV
12:17:20 Sen. McGillvray
12:18:01 Sen. Manzella
12:19:03 Sen. Brown
12:19:57 Sen. Manzella

Closing by Sponsor:
12:20:28 Sen. Manzella

Committee Business:
12:21:44 Chair Regier
12:21:54 Julianne Burkhardt, Legislative Services Division (LSD)
12:22:32 Chair Regier
12:23:15 Sen. Friedel
12:23:28 Chair Regier
12:23:44 Sen. Friedel

ADJOURNMENT

Adjournment: 12:23 PM

_____
Jacelyn Sterling, Secretary

js

Additional Documents:

EXHIBIT(jus38aad.pdf)

Montana State Legislature

2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Any other type of documents such as:**
  - **@ Petitions {if any} Emails, all documents given to Committee Secretary after meeting.**

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Tuesday, February 23, 2021 **Time:** 8:00 A.M.
Place: Capitol **Room:** 303

BILLS and RESOLUTIONS HEARD:

HB 164 - Revise temporary automatic domestic relations orders - Rep. Connie Keogh (D)
SB 241 - Requiring the refund of residential lease application fees - Sen. JP Pomnichowski (D)
SB 252 - Generally revise laws related to judicial review - Sen. David Howard (R)
SB 282 - Assert right of parent to direct child healthcare - Sen. Theresa Manzella (R)

EXECUTIVE ACTION TAKEN:

HB 215 Be Concurred In
SJ 8 Do Pass
SB 194 Do Pass
SB 220 Do Pass as Amended
SB 240 Do Pass
SB 242 Do Pass as Amended

Comments:

Keith Regier

SEN. Keith Regier, Chair

MONTANA STATE SENATE
Roll Call
JUDICIARY COMMITTEE

DATE: 2.23.2021

NAME	PRESENT	ABSENT/ EXCUSED
VICE CHAIR MCGILLVRAY	✓	
VICE CHAIR SANDS	✓	
SEN. ESP	✓	
SEN. HINEBAUCH	✓	
SEN. BENNETT	✓	
SEN. MANZELLA	✓	
SEN. WEBBER	✓	
SEN. BROWN	✓	
SEN. FRIEDEL		✓
SEN. GROSS	✓	
CHAIRMAN REGIER	✓	
11 Committee Members		

SENATE STANDING COMMITTEE REPORT

February 23, 2021

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 220** (first reading copy -- white) **do pass as amended**.

Signed: _____
Senator Keith Regier, Chair

And, that such amendments read:

1. Page 1, line 16 through line 17.
Strike: "or what" on line 16 through "weapon" on line 17

- END -

Committee Vote:
Yes 7, No 4
Fiscal Note Required __

SB0220001SC.slk

SENATE STANDING COMMITTEE REPORT

February 23, 2021

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 194** (first reading copy -- white) **do pass**.

Signed: _____
Senator Keith Regier, Chair

- END -

Committee Vote:
Yes 6, No 5
Fiscal Note Required X

SB0194001SC.slk

SENATE STANDING COMMITTEE REPORT

February 23, 2021

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 240** (first reading copy -- white) **do pass**.

Signed: _____
Senator Keith Regier, Chair

- END -

Committee Vote:
Yes 7, No 4
Fiscal Note Required X

SB0240001SC.slk

SENATE STANDING COMMITTEE REPORT

February 23, 2021

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 242** (first reading copy -- white) **do pass as amended**.

Signed: _____
Senator Keith Regier, Chair

And, that such amendments read:

1. Title, line 4.
Following: "SALE"
Insert: ", SHARE, OR TRANSFER"

2. Title, line 6.
Strike: "AN IMMEDIATE"
Insert: "A DELAYED"

3. Page 1, line 10.
Strike: **"sale"**
Insert: **"transfer"**

4. Page 1, line 11.
Following: "sell"
Insert: ","
Strike: "or"

5. Page 1, line 11.
Following: "sale"
Insert: ", share, or transfer"

6. Page 1, line 15.
Following: "sells"
Insert: ","
Strike: "or"

7. Page 1, line 15.
Following: "sale"
Insert: ", shares, or transfers"

8. Page 1, line 25.
Strike: "on passage and approval"

Committee Vote:
Yes 8, No 3
Fiscal Note Required __

SB0242001SC.slk

Insert: "January 1, 2022"

- END -

SENATE STANDING COMMITTEE REPORT

February 23, 2021

Mr. President:

We, your committee on **Judiciary** report that **Senate Joint Resolution 8** (first reading copy -- white) **do pass**.

Signed: Keith Regier
Senator Keith Regier, Chair

- END -

Committee Vote:
Yes 7, No 4
Fiscal Note Required __

SJ0008001SC.slk

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **House Bill 215** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Keith Regier, Chair

To be carried by Senator Keith Regier

- END -

Committee Vote:
Yes 8, No 3
Fiscal Note Required __

HB0215001SC13689.slk

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 2.23.2021 BILL NO SB220 MOTION NO._____
MOTION: Do Pass as Amended

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 2.23.2021 BILL NO SB194 MOTION NO. _____
MOTION: Do Pass

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL		✓	
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 2.23.2021 BILL NO SB240 MOTION NO. _____
MOTION: Do Pass

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 2.23.2021 BILL NO SB242 MOTION NO._____
MOTION: Do Pass as Amended

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS	✓		
SEN. ESP	✓		
SEN. HINEBAUCH		✓	
SEN. BENNETT	✓		
SEN. MANZELLA	✓		
SEN. WEBBER	✓		
SEN. BROWN		✓	
SEN. FRIEDEL	✓		
SEN. GROSS	✓		
CHAIRMAN REGIER		✓	
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 2.23.2021 BILL NO SJ 8 MOTION NO. _____
MOTION: Do Pass

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 2.23.2021 BILL NO HB 215 MOTION NO. _____
MOTION: Do Concur

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT	✓		
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, February 23, 2021
SB 241 - Requiring the refund of residential lease application fees
Sponsor: **Sen. JP Pomnichowski (D)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
John SinRud	Mt Landlords Assoc		X	
P. J. McHugh	self.		X	
Katjana Stutzer	MontPIRG	X		
Rachel Schmidt	ASMSU	X		
JACK RINCK	ASUM	✓		
Allison Reinhardt	MAS	x		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

2

Tuesday, February 23, 2021
SB 252 - Generally revise laws related to judicial review
Sponsor: **Sen. David Howard (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
[illegible]	[illegible]		X	
Bart Brastrup	MTSCOTA	✓		
Anna Shchemelinin	self	✓		
Brian Thompson	MCHA		X	
Mark Lambert	MCHA / Gallatin Co Atty		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

3

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, February 23, 2021
HB 164 - Revise temporary automatic domestic relations orders
Sponsor: **Rep. Connie Keogh (D)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info

No Visitors Registered into this Committee Meeting

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

4

Tuesday, February 23, 2021
SB 282 - Assert right of parent to direct child healthcare
Sponsor: **Sen. Theresa Manzella (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Dena Johnson	MCPA	✓		
Donna Eckhardt	Self	✓		
Kari Robinson	Self	✓		
Carolyn Truscott	self	✓		
Rebecca Schwartz	Self	✓		
Anna Shchemelinin	self	✓		
Charlotte Sanbria	Self	✓		
Cathy Eakin	self	✓		
Justina Merja	Self	✓		
Amanda Gallagher	Self	✓		
Wade McAlpine	Self	✓		
Garett Bacon	Self	X		
Robyn Mohs	Self	X		
Lana Higgins	self	X		
Jami Kidd	Self	X		
Tammy McCluskey	Self	✓		
Rachel Burright	self	✓		
Jessica Kirkendall	self	✓		
Jessica Fruntman	Self	✓		
Brooke Carlson	Self	✓		
Heather Richards	self	✓		
Holly Russell	Self	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Anna Gamoyer — Billings, Christ — ✓

Senate Judiciary Committee Testimony Requests Meeting: 02/23/2021					
Bill	**Name**	**Position**	**Location**	**Email**	**Affiliation**
HB-164	Debra Steigerwalt	Proponent	Missoula	debbie@missoulafamilylaw.com	N/A
HB-164	P. Mars Scott	Proponent	Missoula	pmarsscott@pmarsscott.com	State Bar, Family Law Section
HB-164	Gail H. Goheen	Proponent	Corvallis	gail@goheenlaw.com	Family Law Section of the Montana State Bar
SB-241	Shyla Patera	Proponent	Black Eagle	spatera@ncils.org	North Central Independent Living Services,Inc
SB-241	Sue Ellerman	Proponent	Missoula	sellerman@thepoverellocenter.org	Poverello Center Inc.
SB-241	Rob R Gregoire	Proponent	Bozeman	rob.gregoire@gmail.com	N/A
SB-241	Jeff Boyle	Proponent	Bozeman	jeffreyboyle@aol.com	N/A
SB-241	Kelsen Young	Proponent	Helena	kyoung@mcadsv.com	Montana Coalition Against Domestic and Sexual Viol
SB-241	Sharon Lodge	Opponent	Bozeman	pomsmt@yahoo.com	Bozeman chapter of MT Landlords & state board
SB-252	Al Smith	Opponent	Helena	monttla@mt.net	Montana Trial Lawyers Association
SB-282	Elizabeth Beil, MD	Opponent	Missoula	lemiller1018@gmail.com	MT Chapter of the American Academy of Pediatrics
SB-282	Lane McGill	Opponent	Powderville	lanemcgill@outlook.com	N/A
SB-282	Kiely Keane or Jean Branscum	Opponent	Helena	jean@mmaoffice.org	Montana Medical Association
SB-282	Stacey Anderson	Opponent	Helena	Sanderson@mtpca.org	Montana Primary Care Association
SB-282	Ann Truesdell	Opponent	Helena	atruesdell.naswmt@socialworkers.org	National Association of Social Workers - Montana
SB-282	Megan Bailey	Opponent	Missoula	mbailey@cedarcreekintegratedhealth.com	N/A
SB-282	Kelsen Young	Opponent	Helena	kyoung@mcadsv.com	Montana Coalition Against Domestic and Sexual Viol

SENATE JUDICIARY
Exhibit No. 10
Date: 2.23.2021
Bill No. HB 164

From: leg-noreply@mt.gov
To: LEG Applications Email Backup; LEG Committee-Senate Judiciary testimony
Subject: Public Comment for Bill HB-164: Revise temporary automatic domestic relations orders 2021-02-23 09:00 AM - (S) Judiciary Successfully Submitted on 02-19-21 15:37
Date: Friday, February 19, 2021 3:37:30 PM
Attachments: February 2021 Testimony HB 164 (Steigerwalt, Debra).pdf

Details:
Bill: HB-164: Revise temporary automatic domestic relations orders 2021-02-23 09:00 AM - (S) Judiciary
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Debra Steigerwalt
Email: debbie@missoulafamilylaw.com
Phone: (406) 880-9131
City, State: Missoula, MT
Written Statement: Please see the attached.
Files: February 2021 Testimony HB 164 (Steigerwalt, Debra).pdf
Testify via Zoom: Yes
Zoom Method: Computer

Testimony HB 164

Before Senate Judiciary Committee

By Debra A. Steigerwalt

Good Morning, Chairman and Members of the Judiciary Committee. My name is Debra Steigerwalt. (S-T-E-I-G-E-R-W-A-L-T). I am an attorney. I have been an attorney since 1996. I am licensed in Montana, California, and Pennsylvania. I am a member of the Family Law Section of the State Bar of Montana and have been on the Family Law Section legislative committee since 2018. I was a staff attorney (also known as a law clerk) for Hon. James Haynes in Hamilton, MT for 8 years. I have been in private practice in Missoula since October 2018 at my firm Thompson & Steigerwalt. Connie Keogh is a Missoula representative and I really appreciate her help in carrying this bill in the house. I appreciate Representative Greef's support in co-sponsoring this bill and Senator Regier's help in carrying the bill to the Senate. Finally, I appreciate the members of the committee for listening to what we have to say.

What I would like to do, is give just a brief overview of the bill, its history, and why we are here. As someone who worked for the district court for a long time, I can tell you that family law takes up a large portion of the Court's time. In divorces and child custody matters, many people represent themselves in Court, sometimes one person is represented, and sometimes both people are represented. Most of my private practice is in family law. In some cases there is an attorney on the other side, and sometimes there is not. There tends to be a great need for pro bono and reduced fee attorneys in family law and a reluctance of attorneys who practice in other areas to take on those pro bono and reduced fee cases. Why? Clients are emotional, clients are getting advice and pressure from friends and relatives who are not attorneys and don't want to listen to you, the parties do things that enrage each other (sometimes by accident) and which take lots of time to work out, and the statutes have evolved over time and can be confusing.

One statute that is very confusing to attorneys, clients, and unrepresented litigants alike is 40-4-121, MCA, the statute that is the subject of HB 164. This statute started out back in 1975 when Montana adopted the Uniform Marriage and Divorce Act. Back then 40-4-121 had about 3 small paragraphs and a narrow subject matter. Today, the statute is a lot larger. New and necessary concepts were added to it, instead of putting those concepts in a separate section of the Montana Code Annotated by themselves.

One of those concepts in 40-4-121 is an "automatic economic restraining order." That was added to the statute in 1997. The idea with the automatic economic restraining order is that you don't want spouses going out and selling marital property and hiding the cash, cancelling insurance, running up debts, cutting off access to checking accounts, etc. And you want the spouses to know right away that they should not be doing that, so that the judge doesn't have to be involved and there is no delay.

The automatic economic restraining order has worked well. But it needs to be updated, it needs to get its own section, and it needs to be accessible to everyone - people who are not represented, and attorneys who do not regularly practice in the area of family law.

Back in 2018, three very well-respected family law practitioners who had about 100 years of experience among them looked at the economic restraining order statutes from other states and identified ways to improve and modernize the economic restraining order language in Montana. And to keep 40-4-121 from getting even more complicated, they wanted the economic restraining order to have its own MCA section. Then – consulting with attorneys who have experience working with unrepresented litigants – they came up with the actual language of the automatic order that should be issued.

They included in the drafted order common issues, the process if issues came up, and what would happen if a spouse didn't follow the order. That way, if you don't have an attorney you can better understand what you are supposed to do when a common issue comes up. If you do have an attorney, you don't have to call your attorney with as many questions. And if you are a pro bono attorney who doesn't practice much in this area of the law, what needs to be done is very clear. It's uniform, it's an extensive resource for common problems, and it's accessible. Also, it should reduce the number of motions that are filed with the court, because what needs to be done will already be laid out in the temporary automatic economic restraining order.

Here is another bit of history. Back in 2019, we came to the legislature and tried to fix all of 40-4-121 all at once. That ended up involving too many issues and being very complicated. Not surprisingly, it didn't pass. We did get a lot of good feedback on the automatic temporary restraining order provisions, however. So, we decided to come back this year and just address the biggest issue – updating the temporary automatic economic restraining order and making it its own statute. And that is what you have before you today in HB 164.

The Family Law Section sent its proposal – now HB 164 – out for approval with the entire family law section last year. We are one of the largest and most active sections in the Montana State Bar and it was approved. Around the same time, the Family Law Section also sent this proposal to Beth McLaughlin at the Montana Supreme Court to get feedback from the Court and the judges and it was well received.

I hope that you folks will vote to pass HB 164 out of committee. The issuance of an effective temporary automatic economic restraining order is a really important part of keeping divorce cases from going off the rails. Spouses have enough on their minds when they are going through a divorce. It is important that they have an updated and clear automatic economic restraining order at the start of the process.

Thank you for listening to my testimony today.

SENATE JUDICIARY
Exhibit No. 11
Date: 2.23.2021
Bill No. HB 164

From: leg-noreply@mt.gov
To: LEG Applications Email Backup; LEG Committee-Senate Judiciary testimony
Subject: Public Comment for Bill HB-164: Revise temporary automatic domestic relations orders 2021-02-23 09:00 AM - (S) Judiciary Successfully Submitted on 02-21-21 11:27
Date: Sunday, February 21, 2021 11:27:02 AM
Attachments: Summary of Testimony on HB 164.pdf

Details:
Bill: HB-164: Revise temporary automatic domestic relations orders 2021-02-23 09:00 AM - (S) Judiciary
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: State Bar, Family Law Section
Name: P. Mars Scott
Email: pmarsscott@pmarsscott.com
Phone: (406) 327-0600
City, State: Missoula, MT
Written Statement: See attached
Files: Summary of Testimony on HB 164.pdf
Testify via Zoom: Yes
Zoom Method: Computer

January 25, 2021

Mr. Chairman, Members of the Committee.

I'm Mars Scott, Chairperson of the Legislative Subcommittee of the Family Law Section of the State Bar of Montana. I've been a practicing attorney for over 40 years and I primarily practice family law. The Family Law Section of the State Bar of Montana has no political agenda. Our only agenda is to improve the quality of the practice of family law, and to make the legal process more efficient, more predictable, and more user friendly for those people going through a divorce. All of us on the Committee have represented both husbands and wives in divorce cases. All of us have been involved it custody disputes involving innocent children. In short, all of us have been on both sides of all issues. Our goal is to reduce the stress on litigants by having clear and understandable laws that objectively ease the stress on family law litigants. HB 164 is one of those bills that achieves that goal.

I was on the Committee that helped pass the law in 1997 to provide that an economic restraining order take effect automatically when a petition for dissolution is filed. In 1997, it was a novel idea to have an automatic restraining order imposed on the marital estate at the time a dissolution action was filed, but the need for such a statute was readily apparent because there were many cases where one party would significantly dissipate the marital estate with impunity while the case was pending. In other words, there was nothing stopping one party from spending all the money that the parties had so there would not be much left to distribute when the case finally came before a judge. After its passage in 1997, Montana had one of the most update laws for economic restraining orders, and generally this law has worked very well, but as time has gone by, and as family law practitioners have had many experiences with the application of this law, it needs to be updated because the law is not entirely clear as to exactly what financial activities are restrained and which ones are not restrained, which has resulted in court hearings to decide those issues.

For example, it was never entirely clear that a court could consider a person's new financial circumstances if they moved out of house and created a second household. This bill clarifies that a court can now consider the reality of a person's new living arrangement and the cost of maintaining two household while their divorce case is pending. Further, it is not entirely clear from the statute as to when a person filing the petition for dissolution is bound by the automatic restraining order. This bill cleans that up by making the petitioner bound by the automatic restraining order when the petition for dissolution is filed, which is logical but was simply not addressed in the 1997 law. There are also issues about whether a party can cancel joint credit cards, change their Will, max out credit lines, take out money against their retirement accounts and life insurance policies, or whether a spouse can open the other spouse's mail. All these issues are now specifically and thoughtfully addressed in this bill.

Another very important clarification in my opinion is that now one spouse cannot destroy marital estate property without consequence. I had a case where one spouse decided to break all the window in the family home. The other spouse called the police, but the police said they could do nothing because both spouses owned the residence and therefore it was theirs to destroy if they wanted. This bill stops spouses from destroying marital property without consequences, including destroying electronically stored information.

Some of these issues may seem minor, but they are not minor in divorce actions and the courts are asked to make rulings on these issues every day. HB 164 clarifies how these issues, and others, are to be handled by the parties thus reducing the number of motions to be filed with the courts.

Including these changes in the law will also make it easier for self-represented litigants to understand their rights and obligations in dissolution proceedings, again, reducing the number of motions filed with the courts.

We strongly urge passage of this bill.

Thank you.

Mars Scott
Chairperson of the Legislative Subcommittee of the Family Law Section of the State Bar of Montana

SENATE JUDICIARY
Exhibit No. 12
Date: 2.23.2021
Bill No. HB 164

From: leg-noreply@mt.gov
To: LEG Applications Email Backup; LEG Committee-Senate Judiciary testimony
Subject: Public Comment for Bill HB-164: Revise temporary automatic domestic relations orders 2021-02-23 09:00 AM - (S) Judiciary Successfully Submitted on 02-21-21 23:26
Date: Sunday, February 21, 2021 11:26:08 PM
Attachments: Goheen Testimony HB 164 (Senate).pdf

Details:
Bill: HB-164: Revise temporary automatic domestic relations orders 2021-02-23 09:00 AM - (S) Judiciary
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Family Law Section of the Montana State Bar
Name: Gail H. Goheen
Email: gail@goheenlaw.com
Phone: (406) 961-4384
City, State: Corvallis, Montana
Written Statement: Not Provided
Files: Goheen Testimony HB 164 (Senate).pdf
Testify via Zoom: Yes
Zoom Method: Computer

Testimony HB 164

Before Senate Judiciary Committee

February 22, 2021

By Gail H. Goheen (Proponent)

Thank you Chairman and Members of the Judiciary Committee, for allowing me to appear before you today. My name is Gail Goheen (G-O-H-E-E-N), and I am a member of the Legislative Committee of the Family Law Section of the Montana State Bar. I was part of a group of attorneys in 2018 that studied several statutes from around the country dealing with automatic economic restraining orders, in an effort to recommend changes for improving Montana's law. I have been an attorney in Hamilton, Montana for over 40 years, primarily practicing family law—representing a wide range of Montanans--from pro bono clients to wealthy folks (probably about equally men and women)—throughout a number of judicial districts in this state.

I don't want to repeat what the other proponents have said here today about regarding the benefits of HB 164; based on my experience, I certainly agree with them. I wish to emphasize that the Bill will make the process for the parties and the impacts on them much more fair and even-handed.

I want to mention a couple of examples, as to how HB 164 will improve the current law. One of these points has to do with Petitioners (those filing for divorce) as opposed to Respondents (those served with the divorce pleadings in a case). Over the years, I have often seen that the party who plans on filing the divorce does considerable "divorce planning." They all too frequently, scheme to have the arrangements in place that will favor them and limit the resources available to the other party after the action is filed. By way of example, I once had a case where the husband took off on a skiing vacation, arranging for the wife to be "served" with the divorce papers in his absence. Very shortly before doing this, however, he closed the joint credit cards, moved all the money from the joint accounts (placing them solely under his control), and even made arrangements to move the wife's car from the family home so she had no transportation. Then she was "served," and was especially handicapped, as her earnings were comparatively low. Needless to say it's very limiting to move forward in meeting living expenses in such circumstances, much less hire an attorney. Usually such divorce planning unfairly handicaps the other party in moving forward towards a fair resolution.

Under the current law, there are no provisions specifically dealing with such divorce "planning" by Petitioners—other than, of course, following what would likely be costly contested proceedings, a Court can remedy the situation by making funds accessible to the other party, etc. Under the proposed legislation, there are two provisions which would be helpful in preventing the behavior I referenced. Section 3 of the bill adds a provision requiring a party filing a "Petition" to include in that Petition, a statement acknowledging that "the automatic economic restraining order provided for [in section 1] applies to the petitioner on the filing of the petition with the

clerk of the district court" [emphasis supplied]. Section 1 (9) [which the Petitioner would be recognizing as applicable] then makes it clear there can be consequences for the types of unfair divorce "planning" that I've referenced. That subsection reads:

> ...In issuing any temporary orders or in a final decree, the court may consider any action taken by the petitioner within a reasonable time prior to the filing of the petition that would otherwise have constituted a violation of this order had this order been issued at the time.

Thus a Petitioner who effectively acts in a manner like I described in my example (cutting off access to assets, closing joint credit cards etc.) may face not only orders changing the access to assets, etc., but actually punishing such behavior. For example, a Court could order a misbehaving Petitioner to pay the other party's attorney fees and other expenses incurred to rectify the situation (to come out of the Petitioner's eventual share of the marital estate), etc. Such possible consequences should cause parties to approach the dissolution of marriage proceedings more fairly, and limit disputes between the parties and the need for Court involvement.

Another change from the existing law relating to economic restraining orders concerns the procedure for requesting a Court to modify any of its requirements. If a party seeks an allowable expenditure beyond that permitted by the automatic economic restraining orders, they currently need to provide just a 5 day written notice to the other party before being allowed to make that expenditure. The current Bill would expand that notice to 14 days and require more details about the expenditure and why it is necessary. A party would thus have a much more reasonable time period to file an objection to such an expenditure with the Court, resulting in the expenditure not being permitted until Court approval, and leaving the party wanting the expenditure with the burden of proof.

Another example of a benefit from the proposed legislation is that it would help clarify what the parties can and cannot do relating to estate planning. Under the current statute, this area is very confusing. The new law would distinctly allow parties to create or revise wills, and certainly powers of attorney (who, for example would want a divorce opposing party to make decisions on their behalf if they became incapacitated) [Section 1 (4)], but this bill would still limit actual present transfer of assets without Court approval, including by changing beneficiaries of retirement plans, life insurance policies, etc.

The last example I'd like to mention has to do with destruction of financial and other records—including electronic records, which would be prohibited under the new bill, without Court order or agreement of the other party [Section 1 (3) (i)]. There is no equivalent provision under the current statute. Such referenced record destruction can greatly hamper obtaining evidence with resulting increased expenses in a proceeding. The new prohibition should make discovery and moving through a case run more smoothly.

Thank you for letting me testify today. With that, I'll open myself up for any questions you may have.

MINUTES

MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Keith Regier, on March 9, 2021 at 9:00 AM, in Room 303 Capitol

ROLL CALL

Members Present in the Committee Room:

Sen. Keith Regier, Chair (R)
Sen. Tom McGillvray, Vice Chair (R)
Sen. Bryce Bennett (D)
Sen. Bob Brown (R)
Sen. John Esp (R)
Sen. Chris Friedel (R)
Sen. Jen Gross (D)
Sen. Steve Hinebauch (R)
Sen. Theresa Manzella (R)

Members Present by Zoom Video Conference:

Sen. Diane Sands, Vice Chair (D)
Sen. Susan Webber (D)

Members Excused: None

Members Absent: None

Staff Present: Julianne Burkhardt, Legislative Branch
Taylor Tyson, Remote Meeting Coordinator
Jacelyn Sterling, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 333, 3/1/2021; HB 313, 3/1/2021, HB 325, 3/1/2021

Executive Action: HB 164 Be Concurred In; HB 200 Be Concurred In

09:01:05 Chair Regier

HEARING ON HB 325

HB 325 was rescheduled for Friday March 12. The committee accepted testimony from witnesses in the committee room.

Opponents' Testimony:
09:02:09 Ed Barlett, Montana Judges Association; State Bar of Montana

09:02:31 Sen. Gross
09:02:45 Chair Regier

09:02:52 Sen. Friedel entered the meeting.

09:03:03 Sen. Sands
09:03:14 Chair Regier
09:03:21 Sen. Sands

09:03:33 Mr. Barlett continued his testimony.

Questions from the Members and responses:
09:10:21 Sen. McGillvray
09:10:40 Mr. Bartlett

HEARING ON SB 333

Opening Statement by Sponsor:
09:11:27 Sen. Brad Molnar (R), SD 28, opened the hearing on SB333, Generally revise drug and human trafficking laws.

Proponents' Testimony:
09:19:39 Al Olszewski, M.D., Kalispell
EXHIBIT(jus47a01)

09:22:41 Dan Brooks, Billings Chamber of Commerce
EXHIBIT(jus47a02)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
09:25:06 Sen. Sands
09:27:51 Sen. Molnar
09:28:43 Sen. McGillvray
09:30:27 Sen. Molnar
09:30:34 Chair Regier
09:30:42 Sen. Molnar
09:30:56 Sen. Gross

09:32:55 Sen. Molnar

09:33:15 Sen. Regier left the meeting and gave the duties of the Chair over to Vice Chair McGillvray.

09:34:45 Sen. Friedel
09:36:44 Sen. Molnar
09:37:59 Sen. Sands
09:46:59 Sen. Molnar
09:47:25 Sen. McGillvray

Closing by Sponsor:
09:47:42 Sen. Molnar

09:48:29 Recess
10:01:45 Reconvened

10:01:47 Chair McGillvray

10:02:12 Recessed
10:13:58 Reconvened

Sen. Regier took over the duties of the Chair. Sen. Hinebauch entered the meeting.

HEARING ON HB 313

Opening Statement by Sponsor:
10:14:12 Rep. Jane Gillette (R), HD 64, opened the hearing on HB313, Generally revise medical examiner/coroner laws.

Proponents' Testimony:
10:18:11 Scott Larson, administrator, Forensic Science Division, Department of Justice (DOJ)
10:18:35 Nanette Gilbertson, Montana County Attorneys Association (MCAA) Montana Sheriffs and Peace Officers Association (MSPOA)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
10:21:34 Sen. Gross
10:21:50 Ms. Gilbertson, MCAA, MSPOA
10:22:02 Mr. Larson, DOJ
10:22:20 Sen. Gross
10:22:28 Mr. Larson

Closing by Sponsor:
10:22:51 Rep. Gillette

Committee Business:
10:24:43 Chair Regier

EXECUTIVE ACTION ON HB 164

10:25:03 **Motion/Vote:** Sen. McGillvray moved that **HB 164 BE CONCURRED IN**. Motion carried unanimously by voice vote. Sen. Sands will carry the bill.

EXECUTIVE ACTION ON HB 200

10:26:20 Chair Regier

10:26:30 **Motion:** Sen. McGillvray moved that **HB 200 BE CONCURRED IN**.

Discussion:
10:26:44 Sen. Sands
10:27:33 Chair Regier
10:28:07 Sen. Gross
10:29:12 Sen. Esp
10:29:48 Chair Regier

10:30:03 **Vote:** Motion carried 7-4 by roll call vote with Sen. Bennett, Sen. Gross, Sen. Sands and Sen. Webber voting no. Sen. Regier will carry the bill.

Committee Business:
10:30:49 Chair Regier
10:31:09 Sen. Sands
10:31:22 Chair Regier

ADJOURNMENT

Adjournment: 10:31 AM

_____
Jacelyn Sterling, Secretary

js

Additional Documents:

EXHIBIT(jus47aad.pdf)

Montana State Legislature

2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**

  Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Tuesday, March 9, 2021 **Time:** 9:00 AM
Place: Capitol **Room:** 303

BILLS and RESOLUTIONS HEARD:

HB 313 - Generally revise medical examiner/coroner laws - Rep. Jane Gillette (R)
SB 333 - Generally revise drug and human trafficking laws - Sen. Brad Molnar (R)

HB 325 - Elect supreme court justices by districts - Rep. Barry Usher (R)
HB 325 was rescheduled for Friday March 12, the committee took testimony from witnesses in person, the sponsor was not at the meeting.

EXECUTIVE ACTION TAKEN:

HB 164 Be Concurred In
HB 200 Be Concurred In

Comments:

Keith Regier

SEN. Keith Regier, Chair

MONTANA STATE SENATE
Roll Call
JUDICIARY COMMITTEE

DATE: 3.9.2021

NAME	PRESENT	ABSENT/ EXCUSED
VICE CHAIR MCGILLVRAY	✓	
VICE CHAIR SANDS	✓	
SEN. ESP	✓	
SEN. HINEBAUCH		✓
SEN. BENNETT	✓	
SEN. MANZELLA	✓	
SEN. WEBBER	✓	
SEN. BROWN	✓	
SEN. FRIEDEL		✓
SEN. GROSS	✓	
CHAIRMAN REGIER	✓	
11 Committee Members		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **House Bill 164** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Keith Regier, Chair

To be carried by Senator Diane Sands

- END -

Committee Vote:
Yes 11, No 0
Fiscal Note Required X

HB0164001SC13941.slk

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **House Bill 200** (third reading copy -- blue) **be concurred in**.

Signed: Keith Regier
Senator Keith Regier, Chair

To be carried by Senator Keith Regier

- END -

Committee Vote:
Yes 7, No 4
Fiscal Note Required _X_

HB0200001SC13689.slk

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 3.9.2021 BILL NO HB 200 MOTION NO. _____
MOTION: Do concur in

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Hearing moved to Friday, March 12, 2021

HB 325 - Elect supreme court justices by districts

Sponsor: **Rep. Barry Usher (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Sam Forstag	ACLU of Montana		✓	
Bruce Spencer	State Bar - MT		✓	
Greg Doney	MDTLA		✓	
Ed DARTLETT	MT JUDGES ASSOC & STATE BAR		X	
Bob Gilbert	Self		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, March 9, 2021
SB 333 - Generally revise drug and human trafficking laws
Sponsor: **Sen. Brad Molnar (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info

No Visitors Registered into this Committee Meeting

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, March 9, 2021
HB 313 - Generally revise medical examiner/coroner laws
Sponsor: **Rep. Jane Gillette (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Nanette Gilbertson	MT County Attorneys	✓		
Nanette Gilbertson	MT Sheriffs & Peace Officers	Amend ✓		
Scott Larson	DOJ FSD	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Senate Judiciary Zoom Testimony Request Meeting: 03/10/2021 @ 9:00 AM

Bill	Name	Position	Location	Email	Affiliation
HB 325	Margaret Bentwood	Opponent	Helena	mkbentwood@gmail.com	League of Women Voters Montana
	Al Smith	Opponent	Helena	monttla@mt.net	Montana Trial Lawyers Association
SB 333	Albert Olszewsk	Proponent	Kalispell	oz@reagan.com	NA
	Daniel Brooks	Proponent	Billings	daniel@billingschamber.com	Billings Chamber of Commerce